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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14080-2024 (O&M)
Date of decision: 18.03.2024

Harnek Singh

... Petitioner

Vs.

The Fazilka Central Cooperative Bank Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.S. Brar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 15.12.2023 (Annexure P-3) passed by the learned Sessions Judge, Fazilka, in Criminal Appeal No.512 of 2023 titled as '*Harnek Singh Vs. FCCB*' in Criminal Complaint No.NACT/557/2019 dated 17.09.2019 under Section 138 of Negotiable Instruments Act, 1881 titled as '*The Fazilka Central Cooperative Bank Ltd. Vs. Harnek Singh*', whereby the petitioner has been ordered to deposit 20% of the compensation amount awarded by the trial Court within a period of 90 days.

2. In brief, facts of the case are that a complaint was filed by respondent No.1 against the petitioner under Section 138 of the Negotiable

Instrument Act, 1881 (hereinafter referred to as the NI Act) on the allegation that mother of the petitioner namely Jarnail Kaur (since deceased) raised RCC loan from the complainant-Bank. In order to repay the said loan, petitioner Harnek Singh issued a cheque bearing No.326482 dated 19.07.2019 for an amount of Rs.9,13,000/- drawn on HDFC Bank Ltd. in favour of the complainant-Bank. On presentation, the aforesaid cheque was returned by the bank vide memo dated 22.07.2019 with the remarks "Account Closed". Thereafter, respondent No.1-complainant sent a legal notice dated 17.08.2019 demanding the cheque amount, however, the petitioner failed to discharge his legal liability. Thereafter, the respondent-complainant filed a complaint under Section 138 of the NI Act, in which the petitioner stood convicted by the learned Chief Judicial Magistrate, Fazilka vide judgment and order of sentence dated 20.11.2023 and sentenced to undergo simple imprisonment for a period of one year and further to pay compensation to the tune of cheque amount. Against the aforesaid judgment of conviction and order of sentence, the petitioner preferred an appeal before the learned Sessions Judge, Fazilka, who, vide order dated 15.12.2023, directed him to pay 20% of the compensation within a period of three months, while suspending sentence of the petitioner. Against this order, the petitioner approached this Court by way of instant petition.

3. Learned counsel for the petitioner *inter alia* contends that while allowing the application of the petitioner seeking suspension of sentence, imposition of condition to deposit 20% of the compensation amount is unjust

and arbitrary and against the proposition of law settled in the judgment passed by the Hon'ble Supreme Court in ***Jamboo Bhandari Vs. MP Industrial Development Corporation Ltd. and others 2013 (12) SCALE 611***, wherein it is held that deposit of minimum 20% of the compensation amount is not an absolute rule. It is further contended that deposit of 20% of the compensation amount cannot be a condition precedent, while allowing bail to the petitioner and the learned Appellate Court ought to have considered the exceptional circumstances for waiving off the said condition.

3. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the lower Appellate Court has passed the impugned order without considering the exceptional circumstances qua imposition of condition of deposit of 20% of the compensation amount.

4. A two Judge Bench of the Hon'ble Supreme Court in ***Jamboo Bhandari's case*** (supra), speaking through Justice Abhay S. Oka has held as under:-

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused, who has been convicted for offence under Section 138 of the N.I. Act, it is

always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.”

5. In view of the settled law, the lower Appellate Court was required to consider whether the present case falls in the exception or not. Consequently, the impugned order dated 15.12.2023 is set aside to the extent of imposition of condition of depositing 20% of the compensation amount and the matter is remanded back to the lower Appellate Court to re-examine the case after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances, which warrants waiver of the requirement of deposit of 20% of the compensation awarded by the learned trial Court, in the light of judgment passed by the Hon’ble Supreme Court in ***Jamboo Bhandari’s case*** (supra).

6. The instant petition stands disposed of in above terms.

[HARPREET SINGH BRAR]
JUDGE

18.03.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No