

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20859 of 2024 (O&M)
Date of Decision: 26.04.2024

M/s Devgan Medical Agencies & Anr.

...Petitioners

Versus

State of Punjab & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr.Vivek Salathia, Advocate
For the petitioners.

KARAMJIT SINGH, J.

1. The present petition under Section 482 Cr.P.C. has been filed for setting aside of order dated 22.02.2024 (Annexure P-3) passed by the Court of Additional Sessions Judge, Amritsar in CRA-52/2024 titled as M/s Devgun Medical Agencies Vs. Raghav Khanna etc. whereby the sentence of the petitioners under Section 138 of Negotiable Instruments Act has been suspended subject to the condition to deposit 20% amount of the compensation awarded by the trial Court, by 22.04.2024.

2. The counsel for the petitioners submits that respondent No.2 filed criminal complaint under Section 138 of NI Act against the petitioners wherein on conclusion of trial, the petitioners were convicted and sentenced to R.I. for a period of one year and further to pay compensation of Rs.5,00,000/- under Section 138 NI Act vide judgment and order dated 30.01.2024 by the Court of Judicial Magistrate Ist Class, Amritsar. Being aggrieved, petitioners have preferred appeal against the said judgment and order and the Appellate Court vide order dated 22.02.2024 has admitted the

appeal and also disposed of application seeking suspension of sentence with direction to the petitioners to deposit 20% of the amount of compensation awarded by the learned trial Court, as per provisions contained in Section 148 of the NI Act.

3. Learned counsel for the petitioners further contends that the learned lower Appellate Court failed to appreciate the facts in the right perspective and imposed the condition to deposit 20% of the compensation in a mechanical manner, without assigning any reasons and such a condition is illegal, arbitrary and in violation of the law as laid down by the Hon'ble Supreme Court in Criminal Appeal Nos.2741 of 2023 (@ SLP(Crl.) Nos. 4927 of 2023 **Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others**, decided on 04.09.2023, wherein it was observed as follows:-

“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 petitioner 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 4 conclusion must be recorded.”

4. I have heard the counsel for the petitioners and gone through the impugned order and the case law referred by counsel for the petitioners and is of the view that the impugned order dated 22.02.2024 to the extent whereby petitioners are directed to deposit 20% of the compensation amount awarded by trial Court is not passed by the Appellate Court in accordance with the afore-stated settled position of law. While passing the said direction, the Appellate Court has not referred to the ratio laid down by Hon'ble Supreme Court in Jamboo Bhandari's case (supra) and no reason is given by the said Court while issuing aforesaid directions.

5. For the foregoing reason, the impugned order dated 22.02.2024 to the extent whereby the condition of depositing of 20% of compensation amount awarded by the trial Court has been imposed for the purpose of suspension of sentence, is hereby set aside. The Appellate Court is directed to re-consider the same after giving opportunity of hearing to the petitioners and then to pass appropriate order in accordance with the law laid down in Jamboo Bhandari's case (supra) and till then not to take any coercive action against the petitioners. The petitioners are directed to appear before the Appellate Court on the next date fixed in the appeal.

6. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

26.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No