

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-20840 of 2024 (O&M)
Date of Decision: 26.04.2024

Sarif Mohammad @ Sareef Mohammad

...Petitioner

Versus

Swaran Singh & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Sunny K. Singla, Advocate
For the petitioner.

KARAMJIT SINGH, J.

1. The present petition under Section 482 Cr.P.C. has been filed for setting aside of order dated 03.05.2023 (Annexure P-4) passed by the Court of learned Additional Sessions Judge, Sangrur in CRA-178/2023 titled as Sarif Mohammad Vs. Swaran Singh & Anr. whereby the sentence of the petitioner under Section 138 of Negotiable Instruments Act has been suspended subject to the condition to pay 20% amount of the compensation awarded by the trial Court within 60 days.

2. The counsel for the petitioner submits that respondent No.1 filed criminal complaint under Section 138 of NI Act against the petitioner wherein on conclusion of trial, the petitioner was convicted and sentenced to R.I. for a period of 1 year and six months and to pay compensation worth Rs.1,70,000/- under Section 138 NI Act vide judgment and order dated 05.04.2023 by the Court of Judicial Magistrate Ist Class, Malerkotla. Being aggrieved, petitioner has preferred appeal against the said judgment and order and the Appellate Court vide order dated 03.05.2023 has entertained

the appeal and also disposed of application seeking suspension of sentence with direction to the petitioner to deposit 20% of the amount of compensation awarded by the learned trial Court, within 60 days in the learned trial Court, as per provisions contained in Section 148 of the NI Act, failing which the order of suspension of sentence shall be deemed to be vacated in view of the law laid down by the Hon'ble Supreme Court in **Surender Singh Deswal @ Col. S.S. Deswal & Ors. Vs. Virender Gandhi & Anr.** 2020(1) SCC (Cri.) 506.

3. Learned counsel for the petitioner, *inter alia*, 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 petitioner and gone through the impugned order and the case law referred by counsel for the petitioner and is of the view that the impugned order dated 03.05.2023 to the extent whereby petitioner is 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.

5. For the foregoing reason, the impugned order dated 03.05.2023 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 petitioner 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 petitioner. The petitioner is 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.

26.04.2024
Jiten

(KARAMJIT SINGH)
JUDGE

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