

2024:PHHC:082359



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-28038-2024 (O&M)
Date of decision : 03.07.2024

M/s Bajaj Industries and another ...Petitioners

Versus

Punjab Agro Food Grains Corporation Ltd. ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Nakul Sharma, Advocate
for the petitioners.

Ms. Deepika Bagri, Advocate and
Mr. Anupma Singla, Advocate
for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of Cr.P.C. seeking quashing of order dated 20.10.2023 (Annexure P-1), passed by the Court of learned Additional Sessions Judge, Ferozepur in Criminal Appeal No. 336 of 2023, titled as *M/s Bajaj Industries vs. Punjab Agro Food Grains*, whereby, while suspending the sentence of petitioner No. 2, who is proprietor of the firm/petitioner No. 1, as awarded to him in criminal complaint filed under Section 138 of Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*), the learned appellate Court had directed petitioner No. 2 to deposit 20% of the compensation amount as awarded by the trial Court within a period of 60 days with the trial Court.

2. It is argued by learned counsel for the petitioners that the impugned order is not sustainable in the eyes of law as learned appellate Court, while giving such direction, failed to consider the fact that the deposit

of 20% of the compensation amount was not absolute requirement for suspension of sentence and this condition was to be imposed in exceptional circumstances. It is further argued that on the same allegations, an FIR bearing No. 38 dated 06.04.2018 under Sections 406 and 420 of IPC was also registered against petitioner No. 2 at Police Station City Jalalabad, District Ferozepur qua the same transaction. However, vide judgment dated 05.03.2024 (Annexure P-4), petitioner No. 2 stands acquitted from the charges framed against him by giving benefit of doubt. Hence, it is urged that the impugned order passed by the appellate Court is liable to be set aside. To fortify his arguments, he has placed reliance upon the authorities cited as ***Amit Kapoor vs. Parminder Singh : 2024 NCPHHC 28608, Jambo Bhandari vs. M. P. State Industrial Development Corporation Ltd. And others : (2024) 1 SCC (Cri) 90, Brijesh Kumar @ Brijesh vs. State of Haryana and another : Law Finder Doc Id # 2411306, Rakesh Ranjan Srivastava vs. The State of Jharkhand and another : 2024 (2) RCR (Criminal) 279, Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. And another : (2007)6 Supreme Court Cases 528, Harjinder Singh vs. HDFC Bank Ltd. and another : 2022 ACD 928 and Chennai-600033 and others vs. P. Anbazhagan and others : 2020 (2) NIJ 727.***

3. Learned counsel for the respondent, who has advance notice of the petition, has argued that there is no infirmity in the impugned order passed by the appellate Court directing the petitioners to deposit 20% of the compensation amount awarded by the trial Court as in an appeal against conviction for dishonour of cheque under Section 138 N.I. Act, the appellate Court, as per Section 148 N.I. Act, has the power to grant suspension of sentence pending appeal with imposition of a condition for payment of a

minimum 20% of compensation/fine amount as ordered by the trial Court. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

5. On a perusal of the record, it is revealed that the learned trial Court, vide judgment of conviction dated 25.09.2023, passed in a complaint filed under Section 38 of N. I. Act, had held petitioner No. 2 guilty for commission of offence punishable under the aforementioned section and apart from awarding sentence to undergo rigorous imprisonment for a period of two years, had also directed him to pay compensation to the tune of cheque amount i.e. Rs. 38,00,000/- along with interest @ 9% per annum from the date of issuance of cheque till the date of passing the order. The petitioners challenged the order passed by the trial Court by filing aforesaid appeal before the learned appellate Court and the appellate Court, vide impugned order dated 20.10.2023, suspended the sentence of petitioner No. 2, subject to his depositing 20% of the compensation amount with the trial Court.

5. In ***Jambo Bhandari***'s case (supra), it was observed by Hon'ble Supreme Court that deposit of 20% of the compensation amount was not an absolute requirement for suspension of sentence, if the Court is satisfied that the condition of such deposit will be unjust or imposing of such a condition will amount to deprivation of the right of appeal of the appellant. This proposition of law is shown to have been followed by the co-ordinate Benches of this Court in ***Brijesh Kumar @ Brijesh***' case (supra) and ***Amit Kapoor***'s case (supra). In the instant case, while imposing condition of deposit of 20% of compensation amount, the learned appellate Court is not

shown to have given any opportunity to the petitioner to make submissions regarding the exceptional circumstances warranting requirement of waiver of depositing of 20% of compensation amount and is shown to have imposed the said condition without the same. Therefore, keeping in view the settled proposition of law to the effect that the appellate Court was firstly required to consider as to whether the instant case falls within the exceptions warranting grant of suspension of sentence without imposing condition of deposit of 20% of compensation amount/fine, the impugned order dated 20.10.2023 cannot be stated to be sustainable to the extent to which the condition of deposit of 20% of the compensation amount was imposed. Accordingly, the same is set aside to that extent. The matter is remanded to learned appellate Court for deciding the same afresh after re-examining the case by granting an opportunity to the petitioners to make submissions regarding exceptional circumstances warranting waiver of requirement of depositing 20% of the compensation amount in pursuance of judgment passed by Hon’ble Supreme Court in *Jambo Bhandari*’s case (supra). The petition stands disposed of.

03.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No