

2024:PHHC:081268



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR No. 1219 of 2024 (O&M)

Date of decision : 02.07.2024

Arvind Kumar

...Petitioner

Versus

Parul Gupta

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Raman Mohinder, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant revision has been filed against the order dated 20.03.2024, passed by the Court of learned Additional Sessions Judge, Fazilka in Criminal Appeal No. 136 of 2024, titled as *Arvind Kumar vs. Parul Gupta*, whereby, while suspending the sentence of the present petitioner 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 the petitioner to deposit 20% of the compensation amount as awarded by the trial Court within a period of 60 days from the date of passing of order i.e. 20.03.2024.

2. It is argued by learned counsel for the petitioner 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. 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* and *Rakesh Ranjan Srivastava vs. The State of Jharkhand and another : 2024 (2) RCR (Criminal) 279.*

3. I have heard learned counsel for the petitioner and have also gone through the material placed on record.

4. On a perusal of the record, it is revealed that the learned trial Court, vide judgment of conviction dated 27.02.2024, passed in a complaint filed under Section 38 of N. I. Act, had held the present petitioner guilty for commission of offence punishable under the aforementioned section and apart from awarding sentence to undergo rigorous imprisonment for a period of one year and six months, had also directed the petitioner to pay compensation to the tune of Rs. 4 Lakhs and in default of the payment, to undergo simple imprisonment for a period of 02 months. The petitioner 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 20.03.2024, suspended the sentence of the petitioner, subject to his depositing 20% of the compensation amount within 60 days from the date of passing the order.

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 lower 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 20.03.2024 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 petitioner 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.

02.07.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>