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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No. 1220-2024(O&M)

Date of Decision:-09.07.2024

ARVIND KUMAR

... Petitioner

Versus

SANJAY GUPTA

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

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

SANJIV BERRY, J.(ORAL)

By way of the present petition, petitioner has challenged the impugned order dated 20.03.2024 passed by Additional Sessions Judge, Fazilka in CRA No.137/2024 titled as *Arvind Kumar vs. Sanjay Gupta* whereby the petitioner was directed to deposit 20% of the compensation amount within 60 days as a condition for suspension of sentence.

2. The learned counsel for the petitioner *inter alia* contended that the impugned order has been passed by learned appellate Court in an illegal and arbitrary manner without considering the facts and circumstances and while admitting the appeal and considered the application under Section 389 Cr.P.C moved by the petitioner for suspension of sentence, the learned appellate Court has erroneously directed the petitioner to deposit 20% of the compensation amount within 60 days as a condition for grant of suspension of sentence in a utter disregard to the law laid down by Hon'ble Supreme Court in *Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors., 2023 (10) SCC 446;* to the effect that imposition



of the condition of 20% for deposit of compensation amount is not a absolute rule and the learned appellate Court should have considered the exceptional circumstances for waiving of the said condition to which no opportunity was afforded to the petitioner before imposing the aforesaid condition. He has also referred to the judgment of Hon'ble Apex Court passed in ***Rakesh Ranjan Shrivastava vs. The State of Jharkhand & Anr, Law Finder Id#2521123***; hence he prays for quashing of the impugned order dated 20.03.2024.

3. From the perusal of record, it transpires that a criminal complaint under Section 138 of the Negotiable Instruments Act was filed by the respondent against the petitioner wherein he was summoned to face trial on the allegations that the petitioner had borrowed ₹16,80,000/- from the complainant during year 2017-2018 for agriculture purpose and in discharge of his liability petitioner had issued cheque No. 022969 dated 25.03.2020 amounting to ₹16,80,000/- in favour of the complainant which on presentation was dishonour by the Bank with the remarks "Funds Insufficient". After conclusion of trial, learned Judicial Magistrate Ist Class, Abohar convicted the petitioner vide judgment and order of sentence dated 27.02.2024 and aggrieved by the same the petitioner had filed the appeal bearing No. CRA/137/2024 pending in the Court of learned Additional Sessions Judge, Fazilka. The learned appellate Court while admitting the appeal ordered suspension of sentence but with the condition that the petitioner will deposit 20% of the compensation amount within 60 days.

4. Considering the submissions made by learned counsel for the petitioner in the light of facts and circumstances of the present case, it is



worth mentioning here that the Hon'ble Supreme Court in **Jamboo**

Bhandari's case (supra) had observed 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. Further, it is apt to mention here that Hon'ble Apex Court in **Rakesh Ranjan Shrivastava's case** (supra) while dealing with the similar proposition had held that the power under Section 143A (1) of the Negotiable Instrument Act is discretionary. This provision is discretionary not mandatory. It has further been laid down there in that while deciding prayer made under Section 143A of the Act, the Court must record brief reasons indicating consideration of all relevant factors. The Hon'ble Supreme court has further laid down broad parameters for exercising such discretion.

6. The perusal of the aforesaid judgments would reveal that the learned appellate Court was required to consider as to whether the present



case of the petitioner falls in the exception or not. Further it has also been specifically laid down therein that it was erroneous premise that the deposit of minimum 20% of the amount is an absolute rule which does not accommodate any exception.

7. The learned appellate Court while passing the impugned order had not discussed or considered as to whether the case of the petitioner falls within the exception or not and has mechanically imposed the deposit of 20% compensation amount as a condition for suspension of sentence of the petitioner.

8. As a consequent, the impugned order dated 20.03.2024 passed by learned Additional Sessions Judge, Fazilka is hereby set aside to the extent of imposition of condition qua deposit of 20% compensation amount and the matter is remanded back to the learned 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 amount in the light of the judgment passed by Hon'ble Supreme Court in *Jamboo Bhandari's* case (supra).

9. However, any observation made above shall not be construed as opinion of this Court on the merits of the case and is only meant for the purpose of decision of present Revision petition.

10. The instant petition is disposed of, in above terms.

(SANJIV BERRY)
JUDGE

09.07.2024

Gyan

- i) Whether speaking/reasoned?
- ii) Whether reportable?

Yes/No
Yes/No