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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No. 1267-2024

Date of Decision:-05.07.2024

TANUJ KUMAR

... Petitioner

Versus

KULDEEP SINGH

... Respondent

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

Present:- Mr. Himanshu Chhabra, Advocate with
Mr. Anil Saini, Advocate for the petitioner.

SANJIV BERRY, J.(ORAL)

By way of the present petition, petitioner has challenged the impugned order dated 08.05.2024 passed by Additional Sessions Judge, Sangrur in CRA No. 257/2024 titled as Tanuj Kumar vs. Kuldeep Singh 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, hence he prays for quashing of the impugned order dated 06.05.2024.

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 ₹4.5 lakhs from the complainant in February, 2018 with the promise to repay the same and also executed a pronote and receipt in favour of the complainant which on presentation was dishonour by the Bank with the remarks "signature differ". After conclusion of trial, leaned Judicial Magistrate First Class, Sangrur convicted the petitioner vide judgment and order of sentence dated 09.04.2024 and aggrieved by the same the petitioner had filed the appeal bearing No. CRA/257/2024 pending in the Court of learned Additional Sessions Judge, Sangrur. 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



worthmentioning 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 4 conclusion must be recorded.”

5. From the perusal of the aforesaid judgment of Hon'ble Apex Court, it 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. The reference by the learned appellate Court in the impugned order in case of **Surinder Singh Deswal alias Colonel S.S. Deswal and others vs. Virender Gandhi (2019) 11 SCC 341** has also been discussed in the case of **Jamboo Bhandari's case** (supra).

6. The learned appellate Court while passing the impugned order



has 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.

7. As a consequent, the impugned order dated 08.05.2024 passed by learned Additional Sessions Judge, Sangrur 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).

8. 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.

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

(SANJIV BERRY)
JUDGE

05.07.2024

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |