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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-34920-2024
Date of decision: 23rd July, 2024

M/s Prospect Engineering through its
Proprietor Avinash C. Vikas and another

...Petitioners

Versus

M/s Triveni trust through its authorized
representative Sh. Vijay Kumar and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Himanshu Sharma, Advocate for the petitioners.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 482 of Cr.P.C. seeking quashing of order dated 28.02.2024 (Annexure P-1), passed by the Court of learned Additional Sessions Judge, Gurugram in Criminal Appeal No. 88 of 2024, titled as '*Prospect Engineering vs. M/s Triveni Trust*', whereby, while suspending the sentence of the 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 him to deposit 20% of the compensation amount as awarded by the trial Court on or before 03.07.2024.



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. Hence, it is urged that the impugned order passed by the appellate Court is liable to be set aside. To fortify his argument, he has placed reliance upon the judgments passed by the co-ordinate Bench of this Court in '*CRM-M-35334-2021* titled as '*M/s Guru Nanak Pesticides & Fertilizers vs. FMC India Pvt. Ltd. and another*' decided on 14.07.2023.

3. I have heard learned counsel for the petitioner 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 01.02.2024 and quantum of sentence dated 07.02.2024, passed in a complaint filed under Section 138 of N.I. Act, had held the 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, had also directed him to pay compensation amount i.e. Rs. 2,66,40,000/-. 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 31.01.2024, suspended the sentence of petitioner, subject to his depositing 20% of the compensation amount with the trial Court.



5. In *Jamboo Bhandari vs. M. P. State Industrial Development Corporation Ltd. And others : (2024) 1 SCC (Cri) 90*, 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 Bench of this Court in *M/s Guru Nanak'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 28.02.2024 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 *Jamboo Bhandari’s case (supra)*. The petition stands disposed of.

[MANISHA BATRA]
JUDGE

23rd July, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |