



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-32922-2024

Date of decision: 07.08.2024

KABIR BHATT

....PETITIONER

Versus

GYAN CHAND AND ANOTHER

...RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present: - Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Surender Singh, AAG, Haryana.

SANJIV BERRY, J. (ORAL)

The instant petition under Section 482 Cr.P.C. has been preferred by the petitioner for setting aside the impugned order dated 15.04.2024 (Annexure P-3) passed by Additional Sessions Judge, Palwal, in CRA No. 150/2024 titled as '*Kabir Bhatt vs. Gyan Chand and another*' whereby the petitioner was directed to deposit 20% of the compensation as a condition for suspension of sentence.

2. As per the learned counsel for the petitioner, the impugned order passed by learned Additional Sessions Judge, Palwal, dated 15.04.2024 (Annexure P-3) is illegal and arbitrary in nature having been passed without considering the facts and circumstances of the case. He, *inter alia*, contends that while admitting the appeal preferred by the petitioner against the judgment of conviction dated 26.02.2024 and order of sentence dated 14.03.2024 (Annexure P-1), the learned appellate Court has erroneously directed the petitioner to deposit 20% of the compensation amount as a condition for grant of suspension of sentence. He contends



that this has been done without considering the law laid down by Hon'ble Supreme Court of India 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 deposit of 20% of compensation amount is not an absolute rule. He contends that the petitioner should have been afforded an opportunity to plead his case coming within the purview of exceptional circumstances, requiring waiving off the said condition, which has not been done. Hence, he prayed for setting aside the impugned order dated 15.04.2024 (Annexure P-3).

3. From the perusal of the record, it transpires that a criminal complaint under Section 138 of the Negotiable Instruments Act read with Section 420 of IPC was filed by the respondent against the petitioner wherein he was summoned to face trial on the allegations that in discharge of his existing liability petitioner had issued a cheque of ₹45,00,000/- to the respondent and on presentation, the same were dishonoured by the Bank. After conclusion of trial, learned Chief Judicial Magistrate, Palwal, convicted the petitioner vide judgment dated 26.02.2024 and order of sentence dated 14.03.2024 (Annexure P-1) and aggrieved by the same the petitioner had filed the appeal bearing No. CRA/150/2024 pending in the Court of learned Sessions Judge, Palwal. 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.

4. From 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 4 conclusion must be recorded.”

5. A bare perusal of the aforesaid judgment of Hon'ble Apex Court 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 that it was an erroneous premise that the deposit of minimum of 20% of the amount is an absolute rule which does not accommodate any exception.

6. The learned appellate Court while passing the impugned order dated 15.04.2024 (Annexure P-3) has not discussed or considered as to whether the case of the petitioner falls within the exception or not and has mechanically imposed deposit of 20% of the compensation amount as a condition for suspension of sentence of the petitioner.



7. Resultantly, the impugned order dated 15.04.2024 (Annexure P-3) passed by learned Additional Sessions Judge, Palwal is hereby set aside to the extent of imposition of condition qua deposit of 20% of the 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 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 petition.

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

(SANJIV BERRY)
JUDGE

07.08.2024
kanika

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