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CRM-M No. 39429 of 2024

JMK Technology Pvt. Ltd.

...Petitioner

Versus

M/s R.A. Santana Marketing Services Pvt. Ltd.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mohd. Arshad, Advocate
for the petitioner.

Mr. G.S. Dhillon, Advocate
for the complainant.

ANOOP CHITKARA, J.

Appeal No.	CRA-137-2024 dated 16.03.2024 titled "JMK Technology v/s M/s R.A. Santana"
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1. Aggrieved by the order dated 18.07.2024 passed by Additional Sessions Judge, Gurugram whereby order dated 18.03.2024 i.e. order of suspension of sentence was re-called because of non-compliance of terms and conditions of such order, petitioner has come up before this Court under Section 528 BNSS, 2023 challenging the said order.
2. Vide order dated 18.03.2024 while suspending the sentence of petitioner, the Additional Sessions Judge directed the petitioner to make payment of 20% of compensation. Compliance was not made regarding payment of 20% of the compensation amount as such order of suspension of sentence was revoked.
3. Feeling aggrieved, the petitioner has come up before this Court.
4. On the last date of hearing, this Court directed the petitioner to demonstrate his financial capacity by declaring the assets. In compliance of the said order, notarized affidavit has been handed over to the respondent-complainant and photocopy is taken on record.
5. I have gone through the net worth of the petitioner and even counsel for the respondent claims to have gone through the same.



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6. Perusal of the same reflects that petitioner is not in a position to deposit 20% of the amount, therefore, it is a case where because of the financial incapacity, petitioner's right of suspension of sentence cannot be taken away.

7. Counsel for complainant submits that in the prayer clause, Annexure P-3 has not been challenged, however there was no reason to challenge the same because his substantive rights were defeated by Annexure P-4 and not Annexure P-3.

8. Given above, the impugned order dated 18.07.2024 is quashed and set aside. Sentence of the petitioner shall remain suspended in terms of order dated 18.03.2024 passed by the Appellate Court, however, deposit of 20% of compensation amount is exempted at this stage. In the entirety of facts and circumstances of the case, the Appellate Court is requested to expedite the hearing. Relief is given to the petitioner due to his financial incapacity and is subject to the condition that petitioner shall not seek any adjournment before the appellate Court. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

04.12.2024
Jyoti Sharma

Whether speaking/reasoned:	Yes
Whether reportable:	No.