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**116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-42559-2024

Date of Decision: 11.09.2024

Satish Kumar

..... Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Pawan Attri, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

1. Prayer in the present petition filed under Section 528 BNSS, 2023 is for setting aside of order dated 05.03.2024 (Annexure P-4) passed by learned Additional Sessions Judge, Kurukshetra in CRA-72-2024 dated 05.03.2024 titled as "Satish Kumar V/s M/s Vohra Trading Company" arising from complaint No. 68 of 2019 dated 22.02.2019/10.04.2019 titled as M/s Vohra Trading Company Vs Satish Kumar, vide which the petitioner is directed to deposit 20% of amount of compensation awarded by learned trial Court i.e. 20 percent of Rs. 3,30,000/- within 60 days from the date of order.

2. Learned counsel for the petitioner has stated that petitioner was convicted by learned Sub Divisional Judicial Magistrate, Pehowa under Section 138 of the Negotiable Instrument Act, 1881 (for brevity, 'the NI Act'), vide judgment dated 08/09.01.2024 and sentenced to undergo rigorous imprisonment of one year and was ordered to pay compensation of Rs.3,30,000/-. It is further submitted that against the order dated 08/09.01.2024, the petitioner filed an appeal before the Court of learned Additional Sessions at Kurukshetra, which is pending for 18.09.2024.

Though application for suspension of sentence of petitioner was allowed,



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vide Annexure P-4, however, the appellate Court, vide impugned order, dated 05.03.2024, ordered the petitioner to pay 20% of the compensation amount with aid of Section 148 of the NI Act. He has submitted that the petitioner has not been provided any opportunity of hearing to submit his defence before the order was passed and hence the same is unsustainable in the eyes of law. It is further submitted that the impugned order has been passed by the learned Appellate Court in violation of the law settled by Hon'ble Supreme Court in Jamboo Bhandari vs M.P.State Industrial Development Corporation Ltd. and others, 2024(1) SCC (Cri) 90 wherein it has been held that 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 NI 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, which is missing in the present case. He further submits that the petitioner is a poor person belonging to BPL family. He further submits that father of the petitioner is critically ill and the petitioner is facing financial crunch and is not in a position to pay the amount of Rs.66,000/- as awarded by learned Appellate Court, however, the petitioner is in a position to make arrangement of Rs.30,000/-/35,000/-, which he is ready to pay. It is submitted that learned trial Court has not appreciated the circumstances of the petitioner as per mandate of Hon'ble Supreme Court in **Jamboo Bhandari's** case (supra).



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3. Notice of motion to the official respondent only.
4. Mr. Sumit Jain, Addl. AG, Haryana, accepts notice on behalf of the State.
5. After hearing learned counsel for the parties and in view of the aforesaid facts, and the judicial precedent settled by Hon'ble Apex Court in **Jamboo Bhandari's** case (supra), without commenting anything on the merits of the case, this Court finds that the poor financial condition of the petitioner has not been taken into consideration by learned Appellate Court while directing him to deposit 20% of the compensation amount. So, the present petition is disposed of and the direction given in the order dated 05.03.2024 by learned Appellate Court regarding deposit of 20% of compensation amount on or before the date fixed and in case he fails to deposit the same, the bail granted to the accused shall be deemed to have been cancelled, is set aside and it is directed that the petitioner would deposit Rs.35,000/- in place of Rs.66,000/-. The petitioner will remain on bail as granted by the Appellate Court till the appeal is decided by the Appellate Court.
6. Disposed of accordingly.

11.09.2024

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Whether Speaking/Reasoned :
Whether Reportable :

(RAJESH BHARDWAJ)
JUDGE

Yes/No
Yes/No