



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

CRM-M-46926-2024

Date of decision: 20.09.2024

Mr. Brijpal Rathi

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Amit Jain, Advocate for the petitioner.

Mr. A.K. Sehrawat, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The present petition under Section 528 of BNSS 2023 has been filed by the petitioner/accused seeking setting aside of order dated 20.10.2023 Annexure P-4 passed by the Court of Additional Sessions Judge, Faridabad in CRA-415-2023 titled Payin Utilities and Services Vs. Damodar Dass Aggarwal vide which the sentence of petitioner under Section 138 NI Act has been suspended subject to condition to deposit 20% of the cheque amount in the Court within period of 60 days.

2. The counsel for the petitioner submits that respondent No.2 filed criminal complaint under Section 138 of NI Act against the petitioner wherein on conclusion of trial, the petitioner was convicted and sentenced to simple imprisonment for a period of 5 months and to pay compensation to the tune of Rs.5,25,000/- vide judgment and order dated 18/21.09.2023. passed by the Court of Judicial Magistrate Ist Class, Faridabad. Being aggrieved, petitioner has preferred an appeal against the said judgment and order and the Appellate Court vide order (Annexure P-4) has entertained the appeal and also disposed of application seeking suspension of sentence with direction to the petitioner to deposit 20% of the cheque amount, within 60 days.



3. Learned counsel for the petitioner, *inter alia*, contends that the learned lower Appellate Court failed to appreciate the facts in the right perspective and imposed the condition to deposit 20% of the cheque amount in a mechanical manner, without assigning any reasons and such a condition is illegal, arbitrary and in violation of the law as laid down by the Hon'ble Supreme Court in Criminal Appeal Nos.2741 of 2023 (@ SLP(Crl.) Nos. 4927 of 2023 ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others***, decided on 04.09.2023, wherein it was observed as follows:-

“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 petitioner 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.”

4. The counsel for the petitioner further submits that the Hon'ble Supreme Court reiterated its earlier view in its recent decision in ***Rakesh Ranjan Srivastava Vs. The State of Jharkhand and Another 2024 (2) RCR (Criminal) 279***.

4. I have heard the counsel for the petitioner and gone through the impugned order and the case law referred by counsel for the petitioner and is of the view that the impugned order Annexure P-4 to the extent whereby petitioner is directed to deposit 20% of the cheque amount is not passed by the Appellate Court in accordance with the afore-stated settled position of law. That deposit of certain amount under Section 148 NI Act is not an absolute rule. No reason has been assigned by the Appellate Court while



passing the impugned order as to why, the petitioner is directed to deposit 20% of the cheque amount.

5. For the foregoing reasons, the impugned order dated 20.10.2023 Annexure P-4 to the extent whereby the condition of depositing of 20% of cheque amount has been imposed for the purpose of suspension of sentence and all the subsequent proceedings Annexure P-5 based on order Annexure P-4 are hereby set aside to that extent only. The Appellate Court is directed to re-consider the matter in issue after giving opportunity of hearing to the petitioner and then to pass appropriate order in accordance with the law laid down in **Jamboo Bhandari’s case** (supra) and **Rakesh Ranjan Srivastava’s** (supra) and till then not to take any coercive action against the petitioner. The petitioner is directed to appear before the Appellate Court on the next date fixed in the appeal.

6. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

20.09.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No