



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

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**CRM-M No.50931 of 2024
Date of decision: 14.10.2024**

GARG TRADERS AND ANOTHER**.... Petitioners****Versus****ASHOK KUMAR****.... Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present : Mr. Jimmy Singla, Advocate for the petitioners.

MANISHA BATRA, J. (oral)

1. The instant petition has been filed by the petitioners seeking quashing of order dated 22.12.2023 passed by learned Additional Sessions Judge, Sangrur passed in CRA/508/2023 titled as *Garg Traders & another vs. Ashok Kumar*, whereby, while suspending the sentence of the owner of the petitioner-firm i.e. petitioner No.2 as awarded to him in criminal complaint filed under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I. Act') to deposit 20% of the compensation amount as awarded by the trial Court within a period of 60 days from the date of passing of order.

2. It is argued by learned counsel for the petitioners 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 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



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judgments passed by the co-ordinate Benches of this Court in ***Abdul Rashid vs. Kuldeep Singh, CRM-M-3878-2024***, decided on 24.01.2024, ***Sarif Mohammad @ Sareef Mohammad vs. Swaran Singh and another, CRM-M-20840-2024***, decided on 26.04.2024, ***Vikram Singh and another vs. Nasar and another, CRM-M-6508-2024***, decided on 08.02.2024 ***and Sahil Puri vs. Sonu Kumar and another, CRM-M-2503-2024***, decided on 18.01.2024.

3. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

4. On a perusal of the record, it is revealed that the learned trial Court, vide judgment of conviction dated 07.12.2023, 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 two years, had also directed him to pay compensation to the tune of cheque amount i.e. Rs. 5,00,000/-. 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 22.12.2023, 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 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 Benches of this Court in **Abdul Rashid**'s case (supra) as well as afore cited other similar cases. 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 22.12.2023 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.

14.10.2024
Jyoti-IV

(MANISHA BATRA)
JUDGE

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