

205-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57803-2022
Date of decision: 05.03.2024

SALESH KUMAR RAI @ SHAILESH KUMAR RAI
...PETITIONER
V/S

STATE OF HARYANA AND ANOTHER
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surinder Singh Duhan, Advocate,
Ms. Gaganpreet Pal Kaur, Advocate and
Ms. Isha Dhingra, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Amandeep Singh Meho, Advocate for
Mr. Harjap Arora, Advocate for respondent No.2.

HARPREET SINGH BRAR J. (ORAL)

The present petition under Section 482 Cr.P.C. has been filed for quashing of order dated 19.10.2022 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Jind in CRA-163 of 2022 titled as 'Shailesh Kumar v. Raj Kumar', whereby, the suspension of sentence has been granted to the petitioner subject to the condition to deposit 20% amount of the compensation awarded.

2. The complainant's case in brief is that the petitioner in order to discharge his legal liability issued a cheque bearing No.722183 dated 16.07.2010 for a sum of Rs.20,00,000/- drawn on Oriental Bank of Commerce, Sector-8, Rohini, Delhi in favour of the complainant. The complainant presented the cheque in State Bank of India, Jind for encashment but the same was returned back dishonoured vide memo dated 08.01.2011 bearing remarks

“Funds Insufficient”. The legal notice was sent to the petitioner but of no effect. Hence the present complaint has been filed against the petitioner.

3. Respondent filed a complaint against the petitioner, in which, vide order dated 19.09.2022, passed by learned Judicial Magistrate Ist Class, Jind, he was sentenced to undergo simple imprisonment for a period of one year for commission of offence punishable under Section 138 of the Act and was further directed to pay compensation to the tune of Rs.25,00,000/-. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Jind. The learned Appellate Court vide order dated 19.10.2022, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within 60 days of passing of the order.

4. 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 compensation 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. Speaking through Justice Abhay S. Oka, it has been held 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.”*

5. Having heard learned counsel for the petitioner and after perusing the judgment passed in ***Jamboo Bhandari (supra)***, the lower Appellate Court was required to consider whether the present case falls in the exception or not. The impugned order dated 19.10.2022 (Annexure P-3), whereby, the condition of depositing 20% of compensation amount has been imposed for granting suspension of sentence is hereby set aside. The learned lower Appellate Court is directed to re-examine the case, after granting an opportunity to the petitioner, to make submissions regarding the exceptional circumstances and decide whether it is an appropriate case that warrants waiver of the requirement of deposit of 20% of the compensation awarded by learned trial Court.

6. The matter is remanded back to the learned lower Appellate Court with a direction to decide the matter afresh in accordance with law in the light of judgment passed by the Hon'ble Supreme Court in ***Jamboo Bhandari's case (supra)***.

7. The revision petition is disposed of accordingly.

March 05, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |