

CRM-M-57883-2023

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH****CRM-M-57883-2023 (O&M)****Date of Decision: 12.03.2024****HARPREET SINGH****...Petitioner****V/S****RAJ DULARI****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Ms. Ekta Chauhan, Advocate
for the petitioner.

Mr. Ankur Sharma, Advocate for the respondent.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the order dated 11.09.2023 (Annexure P-1) passed by learned Additional Sessions Judge, Chandigarh in CRA No. 419 of 2023 (NACT No. 5187/2019) whereby the petitioner has been directed to deposit 20% of the compensation amount awarded by learned trial Court.

2. The complainant's case in brief is that petitioner approached the complainant for extending a friendly loan of Rs. 1 Crore as he wanted to extend his business of automobile. In view of the family relations with the accused-petitioner, the complainant acceded to the request of the petitioner and transferred a sum of Rs. 88 lacs from her account in the personal account of the petitioner on various occasions through RTGS. Thereafter, the petitioner in order to discharge his liability, issued two cheques in favour of the complainant, but when the said cheques was presented for its realization, the same were dishonoured with the remarks "Funds

Insufficient” and on the basis of the same, complaint under Section 138 of Negotiable Instruments Act was filed. Vide order dated 18.08.2023 passed by learned Judicial Magistrate Ist Class, Chandigarh, the petitioner was sentenced to undergo rigorous imprisonment for a period of one year for commission of offence punishable under Section 138 of Negotiable Instruments Act and was further directed to pay compensation to the tune of Rs. 28,00,000/- to the complainant/respondent. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Chandigarh. The learned Appellate Court vide the impugned order dated 11.09.2023 (Annexure P-1), suspended the sentence of the petitioner subject to depositing 20% of the compensation amount.

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 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.”*

4. Mr. Ankur Sharma, Advocate has put in appearance on behalf of the respondent and files his power of attorney. Same is taken on record. Registry is directed to tag the same at the appropriate place. Learned counsel for the respondent vehemently opposes the prayer of learned counsel for the petitioner.

5. Having heard learned counsel for the parties 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 11.09.2023 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.

5. 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)*.
6. Instant petition is disposed of accordingly.

12.03.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No