



CRM-M-58138-2024

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

CRM-M-58138-2024

Date of Decision: 22.11.2024

Nirbhai Singh

..... Petitioner

Versus

Surinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Nitin Sherwal, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

1. Prayer in the present petition filed under Section 528 BNSS, 2023 is for quashing of the impugned order dated 30.05.2022 (Annexure P-3) and all subsequent orders, passed by learned Sessions Judge, Barnala in Criminal Appeal No.CRA-41-2022 (wrongly mentioned as CRA-17-2022 in the impugned order) titled as "Nirbhai Singh vs. Surinder Kaur" to the extent whereby the petitioner has been directed to deposit 20% of the compensation amount awarded by learned trial Court, while exercising its power under Section 148(1) of the Negotiable Instruments Act, 1881 (for brevity, 'the NI Act').

2. Learned counsel for the petitioner has stated that petitioner was prosecuted in a complaint under Section 138 of the Act and he was convicted by learned Judicial Magistrate Ist Class, Barnala under Section 138 of the Negotiable Instrument Act, 1881, vide judgment dated 07.05.2022 and sentenced to undergo rigorous imprisonment for two years and was ordered to pay compensation of Rs.2,00,000/-. It is further submitted that against the order dated 07.05.2022, the petitioner filed an appeal before the Court of learned Sessions Judge at Barnala and learned Appellate Court vide its impugned order dated 30.05.2022 (Annexure P-3) suspended the sentence of petitioner subject to deposit 20% of the



compensation amount with aid of Section 148 of the NI Act. However, due to financial constraints, the petitioner failed to comply with the order dated 30.05.2022 and thus, he was arrested and sent behind the bars. He has further submitted that thereafter again sentence of the petitioner was suspended by learned Appellate Court vide impugned order dated 15.02.2023 subject to deposit of 20% of the compensation as earlier directed. He further submits that again the petitioner could not arrange the amount due to his financial constraints. He submits that even otherwise, the impugned orders dated 30.05.2022 and 15.02.2023 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. It is submitted that learned trial Court has not appreciated the case and circumstances of the petitioner as per mandate of Hon'ble Supreme Court in **Jamboo Bhandari's** case (supra).

3. Heard.

4. After hearing learned counsel for the petitioner and perusing the



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record, it is apparent that sentence of the petitioner was suspended twice by learned Appellate Court subject to deposit of 20% of the compensation amount awarded by learned trial Court. However, the petitioner did not comply with the same.

5. 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, the present petition is allowed subject to payment of costs of Rs.20,000/- to be paid to the complainant by the petitioner. Petitioner is relegated to approach the learned Appellate Court concerned and file an appropriate application alongwith costs of Rs.20,000/- before it, which would be decided, by taking into consideration the law laid down by the Hon'ble Apex Court in **Jamboo Bhandari's** case (supra) in this regard within one month from the date of filing of the application. The costs of Rs.20,000/- would be paid to the complainant forthwith on his appearance before learned Appellate Court. The directions given in the orders dated 30.05.2022 and 15.02.2023 by learned Appellate Court to the extent of depositing 20% of compensation, are set aside and the petitioner continues to remain on bail as per order dated 15.02.2023 of learned Appellate Court till the above-said application is disposed of by the Appellate Court.

(RAJESH BHARDWAJ)
JUDGE

22.11.2024
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No