

CRR-2709-2023

237 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-2709-2023 (O&M)

Date of Decision: 10.01.2024

USHA

...Petitioner

V/S

ANITA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kapish Singla, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)CRM-M-49615-2023

Present application has been filed under Section 5 of Limitation Act for condonation of delay of 179 days in filing the revision petition.

For the reasons mentioned in the application, same is allowed and delay of 179 days in filing the revision petition is condoned.

MAIN CASE

1. The present revision petition under Section 397 read with Section 401 of Cr.P.C. has been filed against the order dated 03.03.2023 passed by learned Additional Sessions Judge, Sonipat in CRA-72 of 2023, whereby the petitioner has been directed to deposit 20% of the compensation amount for suspension of sentence in a cheque bounce case and vide order dated 29.09.2023, the Court had directed the Tehsildar to get 20% amount recovered and remit the same to the Court.

2. The complainant's case in brief is that she, Anita wife of Sh Jaibir is residing at Gali no.1, Ashok Vihar Mehlaana Road, District Sonipat and the petitioner/accused Usha wife of late Sh Satpal, R/o house no. FG2933,

Ist floor, Housing board, Sector 23, Sonipat was having visiting terms and friendly relation with her. The petitioner was in need of money for investment in the business of sale of clothes and the petitioner borrowed a sum of Rs.7,00,000/- from the complainant as a friendly loan on 11.7.2016 and petitioner assured to repay the loan amount within one year. The petitioner in discharge of her legal liability for repayment of the loan amount, issued a cheque bearing no.726282 dated 1/7/2017 of Rs.7,00,000/- drawn on PNB, Main branch, Sonipat having account no.0434000107597792 in favour of the complainant as repayment of the loan amount and the said cheque was duly signed by the petitioner and the petitioner assured the complainant that the said cheque will surely be encashed. The complainant after receiving the above mentioned cheque from the petitioner, presented the same on 3.8.2017 for encashment in PNB Bank, Main branch Sonipat, but the complainant was very surprised when the said cheque was received back with the endorsement of the banker of the petitioner with the remarks "Insufficient funds" and the same was dishonoured and the same was returned to the complainant through his banker with the memo of the banker of the petitioner dated 03.08.2017. Ultimately, the complainant sent a legal notice dated 4.8.2017 through registered post demanding a sum of ₹7,00,000/- within a period of fifteen days from the date of receipt of the notice. The petitioner, despite service of the notice upon him, did not pay the amount to the complainant. Thus, the petitioner committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, this complaint. Respondent filed a complaint against the petitioner in which vide order dated 06.02.2023 passed by learned Judicial Magistrate Ist Class, Sonapat, he was sentenced

to undergo simple 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.7,00,000/- i.e. the amount of cheque. However, it was made clear that the said amount of Rs. 7,00,000/- shall be recovered by the complainant only after the decision of the appeal or revision, if any, filed by the petitioner. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Sonapat. The learned Appellate Court vide order dated 03.03.2023, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount. The petitioner was unable to arrange the requisite compensation amount, therefore, the Court of learned Additional Sessions Judge, Sonapat vide order dated 29.09.2023, directed the Tehsildar, Sonapat to recover the 20% of the compensation amount from the petitioner and remit the same to the Court.

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. 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 03.03.2023 whereby, the condition of depositing 20% of compensation amount has been imposed for granting suspension of sentence and order dated 29.09.2023, whereby Tehsildar, Sonapat has been directed to recover the 20% of the compensation amount from the petitioner are 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. The revision petition is disposed of accordingly.

10.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No