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

CRM-M-56849-2024

Date of decision : 18.11.2024

Abdula Poultry Farm and another

.....Petitioners

Versus

M/s S.S. Poultry Farm

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vinay Kumar Pandey, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed for quashing/modification of the order dated 04.05.2023 (Annexure P-3) and quashing of order dated 30.09.2023 (Annexure P-4) passed by the Ld. Additional Sessions Judge, Gurugram in CRA No. 291 of 2023 titled as 'Abdula Poultry Farm and another vs. M/s S.S. Poultry Farm' whereby the sentence of Petitioner No.2 has been suspended subject to the condition that the petitioners shall deposit 20% of compensation/fine amount as per the provisions of the Section 148 of Negotiable Instruments Act, 1881. Further prayer has been made for staying the operation of impugned orders dated 04.05.2023 and 30.09.2023 to the extent of imposing condition of pre-deposit of 20% of compensation amount during the pendency of said appeal.

2. Learned counsel for the petitioners has stated that petitioner No.2 was convicted by learned Judicial Magistrate First Class, Gurugram under Section 138/142 of the Negotiable Instrument Act, 1881 (for brevity, 'the NI Act'), vide judgment dated 03.04.2023 and sentenced to undergo rigorous imprisonment of 04 months and was ordered to pay



compensation of Rs.16,11,000/-. It is further submitted that the petitioner assailed the order dated 03.04.2023 by filing an appeal before the Court of learned Additional Sessions Judge at Gurugram, which is admitted for hearing on merits. Though application for suspension of sentence of petitioner was allowed, vide Annexure P-3, however, the Appellate Court, vide impugned order, dated 04.05.2023, ordered the petitioner to pay 20% of the compensation amount within a period of 60 days. He has submitted that due to poor financial condition, the petitioner could not comply with the terms and condition of the order, however, now vide order dated 30.09.2023, his bail/surety bonds have been cancelled. It is further submitted that impugned order has been 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, 2023 (4) RCR (Criminal) 296***, 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 or not, the reasons for coming to the said conclusion must be recorded, which is missing in the present case.

3. Heard.

4. Keeping in view the above said facts and the judicial precedent settled by settled by Hon'ble Apex Court in ***Jamboo Bhandari's case (supra)***, this is apparent that the learned Sessions Judge has not taken into consideration the case of the petitioner and has not awarded any opportunity



to the petitioner before passing the impugned order. Under these circumstances, this Court deems it appropriate to dispose of the present petition without issuance of notice to the complainant as it would amount to wastage of time of the Court as well as of the parties.

5. The present petition is disposed of. Petitioners are relegated to approach the learned Appellate Court concerned and file an appropriate application along with 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 directions given in the order dated 04.05.2023 by learned Appellate Court to the extent of depositing 20% of compensation amount and order dated 30.09.2023, whereby the bail/surety bonds were cancelled, are set aside subject to payment of costs of Rs.20,000/- to be paid to the complainant by the petitioner within a period of 10 days from today. The petitioner will remain on bail as granted by the appellate Court till the abovesaid application is decided by the appellate Court in view of the directions as given above.

6. In case the cost is deposited as stated above, notice will be issued to the complainant and on his appearance, amount of Rs.20,000/- awarded as costs shall be paid to the complainant forthwith. Needless to say that in case of non-compliance of the directions given above, the petitioner would be of no avail to the abovesaid relief and the present petition shall be deemed to have been dismissed.

7. Disposed of in above terms.

(RAJESH BHARDWAJ)
JUDGE

18.11.2024

ps-I

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