

**CRM-M-64699-2023**  
**Date of decision: 18.01.2024**

**PREM KUMAR GOEL**

**...PETITIONER**

V/S

RAMAN KUMAR

## ...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. S.P.S. Aulakh, Advocate  
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

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**HARPREET SINGH BRAR J. (ORAL)**

The present petition under Section 482 Cr.P.C. has been filed for setting aside of order dated 05.07.2023 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Kaithal in CRA-29 of 2022 against the judgment dated 31.03.2022 passed by learned Judicial Magistrate Ist Class, Kaithal in NACT-950/2017, whereby the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the cheque amount as compensation within 60 days along with the subsequent order dated 11.09.2023 (Annexure P-2), whereby the bail of the petitioner was cancelled and his bail bonds were forfeited.

2. The complainant's case in brief is that the complainant used to supply his vehicles make Bolero Camper and others on rent/contract and the petitioner works as a contractor in railways. On 26.06.2015, the complainant entered into an agreement with the petitioner to take his six vehicles i.e. three Bolero Camber bearing Registration Nos.HR56A-1882, HR56A-1990 and

HR45-8855 on monthly rent of Rs.22,000/- and Rs.24,000/- per month respectively for a period from 01.07.2015 to 03.06.2016 for loading and unloading of the material of Railway Department. In view of the agreement, the petitioner issued four security cheques bearing Nos.374487, 374488, 374489 and 374490 amounting to Rs.4,14,000/- each of Punjab National Bank, Jakhal in favour of the complainant. But the petitioner did not make any payment to the complainant and the aforesaid cheques were also dishonoured on account of "Funds Insufficient" vide return memo dated 14.07.2017. Thus, the petitioner committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, this complaint.

3. Respondent filed a complaint against the petitioner in which vide order dated 31.03.2022 passed by learned Judicial Magistrate Ist Class, Kaithal, he was sentenced to undergo simple imprisonment for a period of two years for commission of offence punishable under Section 138 of Negotiable Instruments Act and was further directed to pay compensation to the tune of Rs.24,00,000/-. However, it was made clear that the amount, if any, already paid by the convict to the complainant during the trial of the present case, be set off from the amount of compensation. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Kaithal. The learned Appellate Court vide order dated 05.07.2023, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within 60 days of passing of the order. The petitioner was unable to arrange the requisite compensation amount, therefore, the Court of learned Additional Sessions Judge, Sonapat vide order dated 11.09.2023, issued warrant of arrest against the petitioner and directed the Collector, Kaithal 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 05.07.2023, whereby, the condition of depositing

20% of compensation amount has been imposed for granting suspension of

sentence and order dated 11.09.2023, whereby Collector, Kaithal 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.

January 18, 2024  
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(HARPREET SINGH BRAR)  
JUDGE

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