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

CRM-M-64764-2024

Date of Decision:-20.12.2024

SANJAY SHARMA

... PETITIONER

VERSUS

MUKESH KUMAR AND ANOTHER

... RESPONDENTS

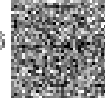
CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Vaibhav Parashar, Advocate for the petitioner.

SANJIV BERRY, J.(ORAL)

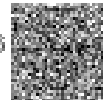
The instant petition under Section 482 of Cr.P.C., has been preferred by the petitioner for setting aside the impugned order dated 27.09.2024 (Annexure P-4) passed by learned Additional Sessions Judge, Faridabad, in CRA No. 292 of 2024 titled as '*Sharma, Versus Mukesh Kumar and Another*', which is preferred by the petitioner against the judgment of conviction (Annexure P-1) dated 23.08.2024 passed by learned Judicial Magistrate Ist Class, Faridabad, in NACT No.28 of 2019 titled '*Mukesh Kumar Versus Sanjay Sharma*', filed by the respondent under Section 138 of Negotiable Instruments Act, vide which, while deciding the application for suspension of sentence, the petitioner was directed to deposit 20% of the compensation amount within one month as a condition for suspension of sentence.

2. As per the learned counsel for the petitioner, the impugned order passed by learned Additional Sessions Judge, Faridabad, dated



27.09.2024 (Annexure P-4) is illegal and arbitrary in nature having been passed without considering the facts and circumstances of the case. He *inter alia* contends that while in the appeal preferred by the petitioner against the judgment of conviction dated 23.08.2024 and order of sentence dated 28.08.2024 (Annexure P-1), the learned appellate Court has erroneously directed the petitioner to deposit 20% of the compensation amount within one month as a condition for grant of suspension of sentence. He contends that this has been done without considering the law laid down by Hon'ble Supreme Court of India in **Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors., 2023 (10) SCC 446;** to the effect that imposition of the condition of 20% for deposit of compensation amount is not an absolute rule and the learned appellate Court should have considered the exceptional circumstances for waiving of the said condition to which no opportunity was afforded to the petitioner before imposing the aforesaid condition. Hence, he prayed for quashing of the impugned order dated 27.09.2024 (Annexure P-4).

3. From the perusal of the record, it transpires that a criminal complaint under Section 138 of the Negotiable Instruments Act was filed by the respondent against the petitioner wherein he was summoned to face trial on the allegations that in discharge of his existing liability petitioner had issued cheque amounting to ₹2,50,000/- to the respondent and on presentation the same was dishonoured by the Bank with the remarks "funds insufficient". After conclusion of trial, learned Judicial Magistrate, Ist Class, Faridabad, convicted the petitioner vide judgment of conviction dated 23.08.2024 and order of sentence dated 28.08.2024 (Annexure P-1) and



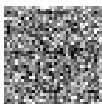
aggrieved by the same the petitioner had filed the appeal bearing No. CRA-292-2024 pending in the Court of learned Additional Sessions Judge, Faridabad. The learned appellate Court while admitting the appeal ordered suspension of sentence but with the condition that the petitioner will deposit 20% of the compensation amount within one month.

4. From the submissions made by learned counsel for the petitioner in the light of facts and circumstances of the present case, it is worth mentioning here that the Hon'ble Supreme Court in ***Jamboo Bhandari's case*** (supra) had observed as under:-

“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 accused 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.”

5. A bare perusal of the aforesaid judgment of Hon'ble Apex Court, it would reveal that the learned appellate Court was required to consider as to whether the present case of the petitioner falls in the exception or not. Further it has also been specifically laid down that it was erroneous



premise that the deposit of minimum of 20% of the amount is an absolute rule which does not accommodate any exception.

6. The learned appellate Court while passing the impugned order dated 27.09.2024 (Annexure P-4) has not discussed or considered as to whether the case of the petitioner falls within the exception or not and has mechanically imposed 20% of the compensation amount as a condition for suspension of sentence of the petitioner.

7. Resultantly, the impugned order dated 27.09.2024 (Annexure P-4) passed by learned Additional Sessions Judge, Faridabad, is hereby set aside to the extent of imposition of condition qua deposit of 20% of the compensation amount and the matter is remanded back to the learned appellate Court to re-examine the case after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances, which warrants waiver of the requirement of deposit of 20% of the compensation amount in the light of the judgment passed by Hon’ble Supreme Court in *Jamboo Bhandari’s* case (supra).

8. However, any observation made above shall not be construed as opinion of this Court on the merits of the case and is only meant for the purpose of decision of present Revision petition.

9. The instant petition is disposed of, in above terms.

(SANJIV BERRY)
JUDGE

20.12.2024
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |