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

CRM-M-64830-2024

Date of decision : 20.12.2024

Kuldeep Construction and Communication

.....Petitioner

Versus

Verma Contractor through its Proprietor Vikas Verma and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Rahul Garg, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

1. Prayer in the present petition filed under Section 482 Cr.P.C., is for quashing of the impugned order dated 06.05.2024 (Annexure P-3), passed by learned Additional Sessions Judge, Patiala to the extent vide which petitioner was directed to pay 20% of the total amount of compensation awarded by the learned trial Court in Appeal No.CRA/252/2024 titled as ***"Kuldeep Construction and Communication Vs. Verma Contractor through its Proprietor Vikas Verma"*** which has been filed against the judgment dated 09.04.2024 passed by the learned Court of Sub Divisional Judicial Magistrate, Samana in complaint under Section 138 of Negotiable Instrument Act, titled as ***'Verma Contractor through its Proprietor Vikas Verma vs. Kuldeep Construction and Communication'*** bearing case No.NACT-309-2016, being illegal, arbitrary and contrary to the law laid down by Hon'ble Supreme Court of India in ***'Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. And Others, 2023 INSC 822'***.



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 Sub Divisional Judicial Magistrate, Samana under Section 138 of the Negotiable Instrument Act, 1881, vide judgment dated 09.04.2024 and sentenced to undergo rigorous imprisonment for one year and was ordered to pay compensation of Rs.1,92,320/-. It is further submitted that against the order dated 09.04.2024, the petitioner filed an appeal before the Court of learned Additional Sessions Judge at Patiala and learned Appellate Court vide its impugned order dated 06.05.2024 (Annexure P-3) suspended the sentence of petitioner and also stayed the recovery of compensation subject to deposit of 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 06.05.2024. He submits that even otherwise, the impugned order dated 06.05.2024 passed by the learned Appellate Court is 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 record, it is apparent that the Appellate Court ordered stay of recovery of compensation 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 disposed of. Petitioner is relegated to approach the learned Appellate Court concerned and file an appropriate application 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 direction given in the order dated 06.05.2024 by learned Appellate Court to the extent of depositing 20% of compensation, is set aside and the petitioner shall continue to be on bail as per order dated 06.05.2024 of learned Appellate Court till the above-said application is disposed of by it.

20.12.2024
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(RAJESH BHARDWAJ)
JUDGE

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