



111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2632-2025

Date of decision: 18.01.2025

ALOK GARG

...PETITIONER

V/S

M/S NATIONAL DIESEL WORKS AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aakash Sharma, Advocate for
Mr. Ravi Malik, Advocate for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition under Section 528 BNSS has been filed for setting aside of order dated 21.10.2024 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Faridabad in an appeal CRA-330 of 2024 titled as '*Alok Garg vs. M/s National Deisel Works*' against the judgment dated 20.09.2024 passed by learned Judicial Magistrate Ist Class, Faridabad in NACT-5016 of 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.

2. The present complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act) has been initiated by the complainant with the submissions that it operates a firm under the name and style of M/s. National Diesel Works, NIT Faridabad, which specializes in Kriloskar Cummins Caterpillar marine engines, generator sets, overhauling, maintenance and servicing contract, fuel pump and injector repair services on a hire basis. Mr. Chander Sein is the proprietor of the firm and is fully familiar with the facts of the case and is authorized to sign on behalf of the firm. The



accused company, dealing in export garments, was in need of a DG set on a rental basis, to meet its production deadlines, due to frequent power cuts in Faridabad. In response to this demand, the complainant supplied old DG sets to the accused company on various dates and for different months, documented through memos/bills, as mentioned in the complaint. To settle the payments for these supplied DG sets, the accused individuals (including the petitioner herein) issued 17 cheques for varying amounts and dates in favour of the complainant. The details of three specific cheques bearing numbers 294938 dated 20.03.2013 for Rs.61,269/-, 294939 dated 20.03.2013 for Rs.56,163/- and 294940 dated 20.03.2013 for Rs.56,163/- drawn on HSBC Ltd., New Delhi out of the aforementioned seventeen, are provided in the complaint. The accused including the petitioner, had allocated the above-said work to the complainant through a purchase order, which is fully detailed and described in Paragraph 4 of the complaint. At the time of issuing the cheques, all the accused persons were present and assured the complainant that the above-mentioned three cheques would be honoured upon presentation in the bank. However, when the three cheques were presented in the bank for encashment, were dishonored and returned with the remarks "Funds Insufficient" as per the memos dated 26.03.2013. The complainant got issued legal notice dated 23.04.2013 to the accused and the period as provided under the same, has also passed, but accused have not paid the amount assured under the cheques. Hence, this complaint.

3. Vide judgment and order dated 20/25.09.2024 passed by learned Judicial Magistrate Ist Class, Faridabad, the petitioner and co-accused were convicted and sentenced to undergo simple imprisonment for a period of 02 months for commission of offence punishable under Section 138 of Negotiable



Instruments Act and was further directed to pay compensation to the tune of Rs.3,00,000/-. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Faridabad. The learned Appellate Court vide order dated 21.10.2024, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within 60 days of passing of the order.

4. 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.”

5. 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 21.10.2024, whereby, the condition of depositing 20% of compensation amount has been imposed for granting suspension of sentence upon the petitioner is 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.
6. 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)**.
7. The revision petition is disposed of accordingly.

January 18, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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