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

CRM-M-2403-2025

Date of decision : 18.01.2025

M/s Tricity Dairy and another

.....Petitioners

Versus

The Ropar District Co-Operative Milk Producers Union Ltd.

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Jasdeep Singh, Advocate
for the petitioners.

RAJESH BHARDWAJ, J. (Oral)

1. Prayer in the present petition filed under Section 528 BNSS, is for partial quashing of order dated 12.12.2024 (Annexure P-3), qua condition directing the petitioner to deposit 20% amount as condition for suspension of sentence passed by the Court of learned Additional Sessions Judge, S.A.S. Nagar, Mohali, Punjab in Criminal Appeal titled as 'M/s Tricity Dairy and others Vs. The Ropar District Coop. Milk and others bearing CRA-256-2024 dated 12.12.2024, filed against order of conviction dated 14.11.2024 bearing case No.NACT/92/2019 dated 05.02.2019, under Section 138 of NI Act. Further prayer has been made for staying the operation of the condition directing the petitioner to deposit 20% of the compensation amount.

2. Learned counsel for the petitioners has stated that petitioner was prosecuted in a complaint under Section 138 of the Act and petitioner No.2 was convicted by learned Judicial Magistrate Ist Class, SAS Nagar, vide judgment dated 14.11.2024 and sentenced to undergo simple



imprisonment for one year and petitioners were ordered to pay compensation of Rs.40,00,000/-. It is further submitted that against the order dated 14.11.2024, the petitioners filed an appeal before the Court of learned Additional Sessions Judge, SAS Nagar which is admitted for hearing on merits. Though the application for suspension of sentence of the petitioner was allowed, however, the learned Appellate Court vide impugned order dated 12.12.2024, ordered petitioner No.2 to pay 20% of the compensation amount under Section 148 of the Negotiable Instruments Act. However, due to financial constraints, the petitioner failed to comply with the order dated 12.12.2024. He submits that even otherwise, the impugned order dated 12.12.2024 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. Notice of motion.



4. Mr. Ashish K. Gupta, Advocate has put in appearance and filed Vakalatnama on behalf of the respondent, in the Court today and same is taken on record. He has opposed the contentions raised by learned counsel for the petitioners.

5. Heard.

6. After hearing learned counsel for the petitioners and perusing the record, it is apparent that the Appellate Court ordered the petitioner to deposit 20% of the compensation amount awarded by learned trial Court. However, the petitioners did not comply with the same due to financial crises.

7. In view of the aforesaid facts, and the law 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. Petitioners are 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 12.12.2024 passed by learned Appellate Court to the extent of depositing 20% of compensation, is set aside and the petitioner No.2 shall continue to be on bail as per order dated 12.12.2024 of learned Appellate Court till the above-said application is disposed of by it.

18.01.2025

ps-I

(RAJESH BHARDWAJ)
JUDGE

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