2025:PHHC:011445

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-211-2025 (O&M)
Date of decision: 27.01.2025

Satnam Singh

... Petitioner

Vs.

Shamsher Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manu Loona, Advocate
for the petitioner.

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HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the order dated 03.01.2025 passed by learned Additional Sessions Judge, Fazilka, in case bearing CRA No.5 of 2015 titled as '*Satnam Singh Vs. Shamsher Singh*' in the proceedings initiated under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I. Act') by the respondent, whereby the petitioner was directed to deposit 20% of the compensation amount awarded by learned trial Court within a period of 60 days from the date of passing of the impugned order.

2. In brief, facts of the case are that a complaint was filed by the respondent against the petitioner under Section 138 of N.I. Act on the allegations that the petitioner being owner and authorized signatory of Secure Mode Idea International Limited cheated the innocent people by inducing them to invest money in his company. The petitioner appointed the respondent as agent of his aforementioned company and induced him to collect money from different people to invest. The respondent was unemployed and he was not aware of malafide intention of the petitioner and he invested his family savings and also got invested money of various persons in the company of the petitioner and in lieu thereof, the petitioner issued various policies/certificates in their names through the respondent. However, after the maturity date of their respective policies/certificates, when the investors approached the petitioner through the respondent to return their invested money along with stipulated benefits, the petitioner lingered on the matter on one pretext or another. On 07.12.2019, the respondent along with some investors approached the petitioner to return the amount to them. When the investors aggressively demanded their respective amounts, then the petitioner, in order to escape their anger, to partly discharge his legal liability, issued cheque No.33068091 dated 07.12.2019 amounting to Rs.11.00 lakhs, of account No.668802010006120 drawn on Union Bank of India, Branch Fazilka in the name of the respondent with an assurance that on presentation

before the bank, the same would be encashed. The petitioner further assured the investors to return their remaining amount within two months. When the respondent presented the aforesaid cheque with his banker i.e. Punjab & Sind Bank, Fazilka for encashment, the same was dishonoured and returned as unpaid vide memo dated 11.12.2019 with the remarks 'Funds Insufficient'. After that, the respondent requested the petitioner to make the cheque amount, however, the petitioner flatly disclosed that the cheque was issued deliberately with pre-malafide, dishonest and guilty intention to cheat and defraud the respondent and other investors in order to escape their anger. Thereafter, the respondent served a legal notice dated 06.01.2020 upon the petitioner through Mr. Amandeep Baweja, Advocate, calling him to pay the cheque amount within a period of 15 days from the date of receipt of said notice, but the petitioner refused to accept the same and paid nothing to the respondent. Having left with no other option, the respondent filed a complaint under Section 138 of NI Act, in which the petitioner stood convicted by learned Chief Judicial Magistrate, Fazilka, vide judgment of conviction and order of sentence dated 19.12.2024 and sentenced him to undergo rigorous imprisonment for a period of two years along with default mechanism and further to pay compensation under Section 357 of the Code of Criminal Procedure, 1973 (*now Section 395 of Bharatiya Nagarik Suraksha Sanhita, 2023*) to the tune of cheque amount along with interest @9% per annum from the date of cheque till that day. Against the aforesaid judgment of conviction and order of sentence, the petitioner preferred an appeal before learned Additional Sessions Judge, Fazilka, who, vide impugned order dated 03.01.2025, directed him to pay 20% of the compensation amount within a period of 60 days from the date of passing of the impugned order. Against the said impugned order, the petitioner approached this Court by way of filing the instant petition.

3. Learned counsel for the petitioner, *inter alia,* contends that imposition of condition to deposit 20% of the compensation amount is unjust and arbitrary and against the proposition of law settled in the judgments passed by the Hon'ble Supreme Court in ***Jamboo Bhandari Vs. MP Industrial Development Corporation Ltd. and others, 2013 (12) SCALE 611*** and ***Muskan Enterprises and another Vs. The State of Punjab and another, Criminal Appeal No.5491 of 2024, arising out of SLP (Crl.) No.8072 of 2024, decided on 19.12.2024,*** wherein it is held that deposit of minimum 20% of the compensation amount is not an absolute rule. It is further contended that deposit of 20% of the compensation amount cannot be a condition precedent and learned Appellate Court ought to have considered the exceptional circumstances for waiving off the said condition.

4. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that

learned Appellate Court has passed the impugned order without considering the exceptional circumstances qua imposition of condition of deposit of 20% of the compensation amount.

5. A two Judge Bench of the Hon'ble Supreme Court in ***Jamboo Bhandari'***s case (*supra*), speaking through Justice Abhay S. Oka has held 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.*
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> *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 conclusion must be recorded."*

6. Recently, the Hon'ble Supreme Court in ***Muskan Enterprises***'s case (*supra*), speaking through Justice Dipankar Datta, has taken the similar view as taken in ***Jamboo Bhandari'***s case (*supra*).

7. In view of the settled law, the impugned order dated 03.01.2025

passed by learned Appellate Court is set aside to the extent of imposition of condition of depositing 20% of the compensation amount and the matter is remanded back to learned Additional Sessions Judge, Fazilka 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 awarded by learned trial Court, in the light of judgment passed by the Hon'ble Supreme Court in ***Jamboo Bhandari'***s case (*supra*).

8. Accordingly, the present petition stands disposed of in the aforesaid terms.

[HARPREET SINGH BRAR]
JUDGE

27.01.2025
vishnu

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