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

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**CRM-M No.6178 of 2025
Date of decision: 03.02.2025**

Arvind Kumar

....Petitioner

Versus

Mandeep Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pardeep Sehrawat, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is for quashing of order dated 04.12.2024 (Annexure P-4) passed by learned Additional Sessions Judge, Kurukshetra, vide which the petitioner was directed to deposit 20% of the compensation amount. Further prayer has been made to stay the operation of the impugned order dated 04.12.2024 (Annexure P-4), during the pendency of the present petition.

2. The brief facts of the case are that the petitioner and the respondent had friendly relations, and in the course of their interactions, the petitioner borrowed a sum of Rs.7,00,000/- from the respondent/complainant and to repay the borrowed amount, the petitioner issued two postdated cheques i.e. Cheque No.420474 for Rs.3,00,000/- dated 01.04.2019, and Cheque No.420475 for Rs.4,00,000/- dated 01.07.2019, in favor of the respondent/complainant. However, when the second cheque bearing No. 420475 was presented

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for encashment on 05.07.2019, it was dishonoured due to insufficient funds. Following the dishonour of the cheque, the complainant made several attempts to contact the petitioner and requested payment, but the petitioner did not respond to the legal and genuine requests. Thereafter, a legal notice was subsequently sent on 19.07.2019 to the petitioner, demanding payment, in question within a period of 15 days, but the petitioner failed to make any payment, leading the respondent/complainant to file a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act'). Thereafter, vide judgment dated 04.11.2024, the petitioner stands convicted under Section 138 of the NI Act and vide order of sentence dated 05.11.2024, a punishment to undergo simple imprisonment for a period of 06 months and to pay the compensation amount of Rs.6,00,000/- was imposed upon the petitioner. Thereafter, the petitioner filed an appeal against the said judgment of conviction dated 04.11.2024 and order of sentence dated 05.11.2024, which is pending adjudication before the learned Additional Sessions Judge, Kurukshetra, however, vide impugned order dated 04.12.2024 (Annexure P-4), the petitioner was directed to deposit 20% of the compensation amount within a period of 60 days. Against the said order (Annexure P-4), the petitioner has approached this Court by way of instant petition.

3. Learned counsel for the petitioner *inter alia* contends that while allowing the application of the petitioner seeking suspension of sentence, imposition of condition to deposit 20% of the compensation amount is unjust and arbitrary and against the proposition of law settled



in the judgment passed by the Hon'ble Supreme Court in ***Jamboo Bhandari Vs. MP Industrial Development Corporation Ltd. and others 2013 (12) SCALE 611***, 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, while allowing bail to the petitioner and the 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, it transpires that the 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.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused,

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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. In view of the settled law, the learned Lower Appellate Court was required to consider whether the present case falls in the exception or not. Consequently, the impugned order dated 04.12.2024 (Annexure P-4) is set aside to the extent of imposition of condition of depositing 20% of the compensation amount and the matter is remanded back to the learned Lower 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 awarded by the learned trial Court, in the light of judgment passed by the Hon’ble Supreme Court in ***Jamboo Bhandari’s case (supra)***.

7. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

03.02.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No