

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

Date of decision: 15.02.2025

....Petitioner

Versus

...Respondent

Present: Mr. Bhanu Pratap Singh, Advocate
for the petitioner.

The present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of order dated 07.03.2024 (Annexure P-3) passed by the learned Additional Sessions Judge, Kurukshetra in CRA-78-2024 titled as 'Kewal Krishan Kumar Vs. M/s Khurdban Traders etc.' vide which the petitioner is directed to deposit 20% of the amount of compensation awarded by the lower Appellate Court within a period of 60 days from the date of order failing which, his bail shall be liable to be cancelled and order dated 10.12.2024 (Annexure P-5) vide which the application filed by the petitioner regarding waiving the payment of 20% of the compensation amount has been dismissed.

Brief facts of the case are that a complaint was filed by the respondent against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short ‘the Act’) on the ground of dishonouring of cheques bearing No.441171 dated 14.07.2016 amounting to Rs.2,30,943/- and No.340440 dated 18.07.2016 amounting to Rs.2,00,000/- issued in favour of



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the complainant/respondent by the petitioner in discharge of his liability. Vide judgment of conviction dated 05.02.2024 and order of sentence dated 12.02.2024, the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year and was further directed to pay compensation to the tune of the impugned cheque amount within three months from the date of order. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Kurukshetra. The learned Appellate Court vide order dated 07.03.2024, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within 60 days from the date of order.

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 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 4 conclusion must be recorded.”

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 07.03.2024 (Annexure P-3), whereby, the condition of depositing 20% of the compensation amount awarded has been imposed for granting suspension of sentence and order dated 10.12.2024 (Annexure P-5), whereby, application for waiving of payment of 20% of the compensation amount has been dismissed, are 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.

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)***.

The petition is disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

15.02.2025

Neha

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