



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

CRM-M-11690-2025

Date of decision: 03.03.2025

Amit Kumar @ Shakti Gilla

...Petitioner

Versus

Avinash Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Ankit Bishnoi, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. The present petition under Section 528 of BNSS 2023 has been filed for setting aside of order dated 03.12.2024 (Annexure P-3) passed by the Court of Additional Sessions Judge, Fazilka in CRA-374/2024 titled as Amit Kumar @ Shakti Gilla Vs. Avinash Kumar whereby the sentence of the petitioner/convict under Section 138 of Negotiable Instruments Act has been suspended, subject to the condition to deposit 20% of amount of the compensation awarded by the trial Court, within a period of next 90 days.

2. The counsel for the petitioner submits that complainant/respondent filed criminal complaint under Section 138 of NI Act against the petitioner wherein on conclusion of trial, the petitioner was convicted and sentenced to RI for a period of two years and to pay compensation 1.5 times the cheque amount and in default to further undergo SI for a period of three months under Section 138 NI Act by the Court of Judicial Magistrate Ist Class, Abohar. vide judgment and order dated 04.11.2024. Being aggrieved, the petitioner has preferred appeal against the said judgment and order and the Appellate Court vide order dated 03.12.2024 (Annexure P-3), has admitted the appeal and also disposed of application seeking suspension of sentence with direction to the petitioner to deposit 20% of the amount of compensation awarded by the



learned trial Court, as per provision of Section 148 of the NI Act.

3. Learned counsel for the petitioner further 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 in a mechanical manner, without assigning any reasons 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, wherein it was observed 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.”

4. I have considered the submissions made by counsel for the petitioner and gone through the impugned order and the case law referred by counsel for the petitioner and is of the view that the impugned order dated 03.12.2024 (Annexure P-3) to the extent whereby petitioner/convict is directed to deposit 20% of the compensation amount awarded by trial Court is not passed by the Appellate Court in accordance with the afore-stated settled position of law as laid down in ***Jamboo Bhandari's case (supra)*** as no reason is given by the said Court while issuing aforesaid directions. As per the settled position of law, according to Section 148 NI Act, the requirement to deposit a minimum 20% of the fine or compensation during an appeal is not mandatory, instead, it is discretionary power vested with the appellate Court meaning the said Court can choose to waive the said deposit in certain exceptional circumstances depending on the facts of the case.

5. For the foregoing reasons, the impugned order dated



03.12.2024 (Annexure P-3) to the extent whereby the condition of depositing of 20% of compensation amount awarded by the trial Court has been imposed for the purpose of suspension of sentence, is hereby set aside. The Appellate Court is directed to re-consider the same after giving opportunity of hearing to the parties and then to pass appropriate order in accordance with the law laid down in *Jamboo Bhandari's case (supra)* and till then not to take any coercive action against the petitioner. The petitioner is directed to appear before the Appellate Court on the next date fixed in the appeal and the issue with regard to deposit of percentage of compensation/fine imposed by the trial Court under Section 148 NI Act is to be decided within next one month thereof.

6. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent/complainant. However, if he feels dissatisfied with this order, he may move an application to recall the same.

7. The present petition is disposed of in aforesaid terms.

03.03.2025

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**