

**CRM-M-16770-2025 (O&M)****-1-****146****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-M-16770-2025 (O&M)****Date of Decision: 26.03.2025**

Bhup Singh

.....Petitioner

Vs.

Babita Yadav

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Nikhil Thamman, Advocate and
Ms. Sunaina, Advocate,
for the petitioner.

SUDEEPTI SHARMA J. (ORAL)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, for quashing of order dated 18.09.2024 (Annexure P-3) and 22.11.2024 (Annexure P-4) passed by learned Additional Sessions Judge, Gurugram, to the extent of condition imposed upon the petitioner to pay 20% of the compensation amount in appeal No.CRA/438/2024 titled as "Bhup Singh Vs. Babita Yadav" in NACT-7472-2017 dated 09.04.2018. Further prayer has been made to stay the operation of the impugned orders dated 18.09.2024 and 22.11.2024, during the pendency of the present petition.

2. The brief facts of the case are that a complaint was filed by the respondent/complainant against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') on the ground of dishonouring of cheque bearing No.000012 dated 26.12.2017 amounting to Rs.30,00,000/- issued in favour of the complainant/respondent by the petitioner in discharge of the liability. Vide judgment dated 22.08.2024,

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petitioner was convicted for the commission of offence punishable under Section 138 of the Act on account of dishonour of cheque bearing No.000012 dated 26.12.2017 for an amount of Rs.30,00,000/- drawn on HDFC Bank, Sector-29, Gurugram, in favour of the respondent/complainant in discharge of legally enforceable debt and vide order dated 28.08.2024, petitioner was sentenced to undergo simple imprisonment for a period of one year and was further directed to pay compensation of Rs.45,00,000/- against the cheque in question to the complainant/respondent. Thereafter, aggrieved against the judgment of conviction dated 22.08.2024 and order of sentence dated 28.08.2024, the petitioner preferred an appeal before the learned Additional Sessions Judge, Gurugram. The learned Appellate Court while issuing notice in the appeal, allowed the application for suspension of sentence and also stayed the operation of order to pay compensation of Rs.45,00,000/- to the respondent/complainant during the pendency of the appeal, subject to the furnishing of bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to its satisfaction with the condition that the petitioner shall deposit 20% of the total amount of compensation on or before 22.11.2024. On 22.11.2024, the Appellate Court, adjourned the case for 27.03.2025 for making payment of 20% of compensation amount and in default, bail of the petitioner will be cancelled.

3. Learned counsel for the petitioner, *inter alia*, contends that the learned Appellate Court failed to appreciate the facts in the right perspective and imposed the condition to deposit 20% of the compensation 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 ***“Jamboo***



Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others”, 2013 (12) SCALE 611, wherein, it has been 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 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.”

4. The learned counsel for the petitioner further submits that the law laid down in ***Jamboo Bhandari’s case*** (supra) is further reiterated by the Hon’ble Supreme Court in **Criminal Appeal No.741 of 2024** titled as ‘***Rakesh Ranjan Srivastava Vs. The State of Jharkhand and another***’ decided on 15.03.2024 and in **Criminal Appeal No.5491 of 2024** titled as ‘***Muskan Enterprises and another Vs. The State of Punjab and another***’ decided on 19.12.2024.

5. I have heard the learned counsel for the petitioner and gone through the impugned orders and the case law referred by learned counsel for the petitioner.

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6. In view of the aforesaid facts and after perusing the judgments passed by Hon'ble the Supreme Court in *Jamboo Bhandari's* case (supra), *Rakesh Ranjan Srivastava's* case (supra) and *Muskan Enterprises's* case (supra), the Appellate Court was required to consider whether the present case falls in the exception or not? Accordingly, the impugned order dated 18.09.2024, whereby the condition of depositing 20% of the compensation amount awarded has been imposed for granting suspension of sentence as well as the order dated 22.11.2024, are hereby set-aside.

7. The learned 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.

8. The matter is remanded back to the learned Appellate Court with a direction to decide the matter afrest in accordance with the law laid down in the light of aforesaid judgments passed by the Hon'ble Apex Court.

9. The petition stands disposed of accordingly.

(SUDEEPTI SHARMA)
JUDGE

26.03.2025

Virrendra

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No