



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

CRM-M-20001-2025

Date of decision: 09.04.2025

Naresh Kumar

.....Petitioner

versus

Raj Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Jainainder Saini, Advocate and
Ms. Shilpa Saini, Advocate for the petitioner.

RAJESH BHARDWAJ, J.

1. Prayer in the present petition is for quashing of order dated 09.09.2024 (Annexure P-3) passed by the learned Additional Sessions Judge, Hisar in CRA-334-2024 titled as '*Naresh Kumar Vs. Raj Kumar*' (arising out of Complaint No.NACT/2938 of 2021 titled as '*Raj Kumar Vs. Naresh Kumar*' dated 18.10.2021 decided on 14.08.2024 (Annexure P-1) vide which the petitioner has been directed to deposit 20% of the compensation amount of Rs.4 lacs awarded by the learned trial Court in view of Section 148 of the Negotiable Instrument Act, 1881.

2. Learned counsel for the petitioner has stated that petitioner was convicted by learned Judicial Magistrate Ist Class, Hisar under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the NI Act'), vide judgment dated 14.08.2024 and sentenced to undergo rigorous imprisonment of 01 year and was ordered to pay compensation to the tune of Rs.4 lacs i.e. double the cheque amount, to the respondent. It is further submitted that against the orders dated 14.08.2024, the petitioner filed an appeal before the Court of learned Additional Sessions Judge, Hisar. Though application for suspension of sentence of petitioner was allowed,



vide order dated 09.09.2024, however, the Appellate Court ordered the petitioner to deposit 20% of the compensation amount within 60 days from that date. He has submitted that the petitioner has not been provided any opportunity of hearing to explain his financial condition and put forward his case and hence the same is unsustainable in the eyes of law. Thus, the learned Appellate Court has not afforded any opportunity to the petitioner to put forward his case and as such the Appellate Court has failed to follow the mandate of Hon'ble Supreme Court given in **Jamboo Bhandari vs M.P.State Industrial Development Corporation Ltd. and others, 2024(1) SCC (Cri) 90**. He prays that the petitioner be granted one opportunity to present his case before the Appellate Court and then pass fresh order after considering his contentions as well as the mandate of Hon'ble Supreme Court. He has further stated that in the **Jamboo Bhandari** case (supra), it has been held that 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 NI 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, which is missing in the present case.

3. Heard.

4. After hearing counsel for the petitioner and perusing the record, it is apparent that the petitioner was given 60 days time to deposit 20% of the compensation amount awarded by the trial Court and the order

has been passed without affording any opportunity to the petitioner to explain his position and as such, the same is against the mandate of Hon'ble Supreme Court in **Jamboo Bhandari's case (supra)**.

5. In view of the aforesaid facts, and the judicial precedent settled by Hon'ble Apex Court in **Jamboo Bhandari's case (supra)**, without commenting anything on the merits of the case, the present petition is disposed of. Petitioner is relegated to approach the learned Appellate Court concerned and file an appropriate application before it, which would be decided by passing a fresh order, by taking into consideration the law laid down by the Hon'ble Apex Court in **Jamboo Bhandari's case (supra)** in this regard within two weeks from the date of filing of the application. The directions given in the order dated 09.09.2024 by learned Appellate Court to the extent of depositing 20% of compensation, is *set aside* however, the petitioner shall continue to remain on bail as per order dated 09.09.2024 of learned Appellate Court till the above said application is disposed of by it.

09.04.2025
ps-I

(RAJESH BHARDWAJ)
JUDGE

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