



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

CRM-M-20123-2025
Date of decision: 21.04.2025

POONAM

...PETITIONER

V/S

SANJEEV GARG

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Simran, Advocate for
Mr. Sandeep Saini, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition under Section 528 of BNSS, 2023 has been filed for setting aside of order dated 27.08.2024 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Jind in an appeal CRA No.150 of 2024 titled as '*Poonam vs. Sanjiv Garg*' filed against the judgment dated 26.07.2024 passed by learned Sub-Divisional Judicial Magistrate, Narwana in NACT-191 of 2021, whereby, the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the cheque amount within 60 days.

2. The present complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act) has been initiated by the complainant-Sanjeev Garg with the submissions that on 21.07.2019, the complainant gave a loan of Rs.3,00,000/- to the petitioner. Thereafter, again on 02.04.2020, the complainant advanced a loan of Rs.2,65,000/- to the petitioner on account of friendly relations. Thereafter, in discharge of legal debt and liability, the petitioner issued cheque bearing No.988578 dated



05.07.2021 drawn at SBI Bank, Main Market, Mehrauli branch in favour of the complainant with the assurance that the cheque will be encashed upon its presentation. However, upon presentation, the said cheque was dishonoured with the remarks "Funds Insufficient" vide return memo dated 12.07.2021. Thereafter, the complainant got issued legal notice dated 25.07.2021 to the petitioner/accused, but she failed to pay the aforementioned amount. Hence, this complaint.

3. Vide judgment of conviction dated 26.07.2024 and order on quantum of sentence dated 30.07.2024 passed by learned Sub-Divisional Judicial Magistrate, Narwana, the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year for commission of offence punishable under Section 138 of Negotiable Instruments Act and was further directed to pay compensation to the tune of Rs.8,00,000/- under Section 143(1) (proviso) of NI Act read with Section 357(3) Cr.P.C. within a period of two months, in default of payment of compensation amount, the same was recoverable under the provisions of Section 421 Cr.P.C. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Jind. The learned Appellate Court vide order dated 27.08.2024, suspended the sentence of the petitioner subject to depositing 20% of the cheque amount either in the shape of FDR or otherwise within 60 days of passing of the order.

4. 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 amount 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 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.”

5. 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 27.08.2024, whereby, the condition of depositing 20% of cheque amount has been imposed for granting suspension of sentence upon the petitioner is 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.

6. 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)***.

7. The petition is disposed of accordingly.

April 21, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |