

CRM-M-20137-2025
Date of decision: 21.04.2025

...PETITIONER

V/S

...RESPONDENTS

Present: Mr. Kuldeep Singh, Advocate
for the petitioner.

1. The present petition under Section 528 BNSS has been filed for setting aside of order dated 18.11.2024 (Annexure P-2) passed by the Court of learned Additional Sessions Judge, Fazilka in an appeal CRA No.342 of 2024 (wrongly mentioned as '346' in the head-note) titled as '*Ramesh Singh vs. Raj Singh*' filed against the judgment dated 24.10.2024 passed by learned Additional Chief Judicial Magistrate, Fazilka in NACT-586 of 2020, whereby, the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the cheque amount as compensation 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 with the submissions that in discharge of legal debt and liability, the petitioner issued cheque bearing No.034427 dated 14.10.2020 for a sum of Rs.8,00,000/- drawn at Oriental Bank of Commerce, Branch Guruharshai in his favour, 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 19.10.2020. Thereafter, the complainant got issued legal notice dated 22.10.2020 to the petitioner/accused, but he failed to pay the aforementioned amount. Hence, this complaint.

3. Vide judgment of conviction and order on quantum of sentence dated 24.10.2024 passed by learned Additional Chief Judicial Magistrate, Fazilka, the petitioner was convicted and sentenced to undergo simple imprisonment for a period of 01 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 357(3) Cr.P.C., in default of payment of compensation amount, the petitioner was further directed to undergo simple imprisonment for two months. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Fazilka. The learned Appellate Court vide order dated 18.11.2024, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount 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 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 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 18.11.2024, whereby, the condition of depositing 20% of compensation 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

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