



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

CRM-M-21549-2025
Date of decision: 28.04.2025

MOHD RAFI

...PETITIONER

V/S

NISHA MAURYA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition under Section 528 of BNSS, 2023 has been filed for quashing/setting aside of order dated 17.01.2025 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Faridabad in an appeal CRA No.24 of 2025 titled as '*Mohd. Rafi vs. Mrs. Nisha Maurya*' filed against the judgment dated 20.12.2024 passed by learned Judicial Magistrate Ist Class, Faridabad in NACT-972 of 2019, whereby, the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the compensation 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-Mrs. Nisha Maurya with the submissions that the petitioner entered into an agreement to sell dated 12.07.2013 with her to sell a plot measuring 67 Sq. Yards situated at Mauza Sarurpur, Tehsil Ballabgarh, District Faridabad for a total sale consideration of Rs.4,20,000/- to the petitioner and he executed and signed the cash receipt in presence of



witnesses. However, the complainant spent an amount of Rs.80,000/- for boundary wall over the said plot. The petitioner failed to get executed and registered the sale deed in favour of the complainant. Therefore, he entered into another agreement to sell dated 16.08.2018 with the complainant to sell her a plot measuring 70 square yards, situated at Mauza Sarurpur, Tehsil Ballabgarh, District Faridabad. As per the terms and conditions of the agreement, the above said full and final agreement to sell will be treated as cancelled when the petitioner would pay an amount of Rs.5 lakhs to the complainant. However, neither the accused executed the sale deed nor did he handed over the possession of the plot to the complainant. As such, in discharge of legal debt and liability, the petitioner issued cheque bearing No.997741 dated 28.12.2018 for an amount of Rs.5 lakhs drawn on ICICI Bank, SCO-145, 146, 147, Ground Floor, Sector 21-C, Faridabad 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 29.12.2018. Thereafter, the complainant got issued legal notice dated 15.01.2019 to the petitioner/accused, but he failed to pay the aforementioned amount. Hence, this complaint.

3. Vide judgment of conviction dated 20.12.2024 and order on quantum of sentence dated 23.12.2024 passed by learned Judicial Magistrate Ist Class, Faridabad the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of three months for commission of offence punishable under Section 138 of Negotiable Instruments Act and was further directed to pay compensation to the tune of Rs.10,00,000/- under Section



357(3) Cr.P.C. within a period of two months, in default of payment of compensation amount, the petitioner was further directed to undergo 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, Faridabad. The learned Appellate Court vide order dated 17.01.2025, 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 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 17.01.2025 is hereby set aside to the extent of imposing the condition of depositing 20% of compensation amount. 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 28, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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