



147

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

**CRM-M No.21477 of 2025
Date of Decision : 24.04.2025**

Mohammad Ashraf

.....Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Abdul Aziz, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for quashing of order dated 30.01.2025 (Annexure P-4) passed by the learned Additional Sessions Judge, Malerkotla in Criminal Appeal No.18 of 2025 titled as Mohammad Ashraf vs. Amarjeet Singh (Annexure P-2) arising out of judgment dated 02.01.2025 passed in criminal case No.NACT/28/2020 titled as Amarjeet Singh vs. Mohammad Ashraf Ali under Section 138 of Negotiable Instruments Act, 1881 (Annexure P-1) being wrong, illegal and unsustainable in the eyes of law.

2. Learned counsel for the petitioner has submitted that the petitioner was prosecuted in a complaint under Section 138 of the Act. He has further submitted that the petitioner was convicted by the learned Sub



Divisional Judicial Magistrate, Malerkotla vide judgment dated 02.01.2025 and sentenced to undergo rigorous imprisonment for 01 year and was ordered to pay compensation to the tune of double the cheque amount to the complainant. It is further submitted that the petitioner assailed the order dated 02.01.2025 by way of filing an appeal before the Court of learned Additional Sessions Judge, Malerkotla, which is admitted for hearing. Though the application for suspension of sentence of the petitioner was allowed, however, the learned Appellate Court vide impugned order dated 30.01.2025, ordered the petitioner to deposit 20% of the cheque amount as compensation within 60 days and the same shall be disbursed to the complainant within 10 days thereafter. However, he has submitted that the learned Appellate Court has not taken into consideration the financial capacity of the petitioner and thus passed the impugned order. He has further submitted that the impugned order directing the petitioner to deposit 20% of the cheque amount is unsustainable in the eyes of law as per the provisions of Section 148 of Negotiable Instruments Act and the same has been passed in violation of the law settled by the Hon'ble Supreme Court 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

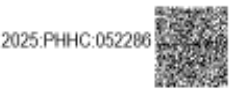


offence under Section 138 of the NI Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes 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 learned counsel for the petitioner and perusing the record, it is apparent that the learned Appellate Court suspended the sentence of the petitioner and ordered to deposit 20% of the cheque amount vide order dated 30.01.2025. However, due to financial constraints, the petitioner failed to comply with the order dated 30.01.2025. 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



30.01.2025 by the learned Appellate Court to the extent of depositing 20% of the cheque amount, is set aside however, the petitioner shall continue to remain on bail as per order dated 30.01.2025 of the learned Appellate Court till the above said application is disposed of by it.

24.04.2025
rittu

(RAJESH BHARDWAJ)
JUDGE

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