

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

2025:PHHC:058422



111

**CRR-1174-2025 (O&M)  
Date of Decision: 05.05.2025.**

Ashish Garg

...Petitioner.

Versus

Suresh Kumar

...Respondent.

\*\*\*

**CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Present: Dr. Deepak Jindal, Advocate for the petitioner.

\*\*\*

**SUKHVINDER KAUR, J.**

**CRM-18244-2025**

Prayer made in the application under Section 5 of the Limitation Act for condonation of delay of 16 days in filing the present petition.

Keeping in view the averments made in the application, the delay of 16 days in filing the revision petition is hereby condoned.

CRM disposed of.

**Main case**

The present petition under Section 528 BNSS has been filed for modification of order dated 15.01.2025 passed by the Court of learned Additional Sessions Judge, Kurukshetra, in CRM-22 of 2025, passed in the appeal arising out of judgment and order dated 20.11.2024/ 21.11.2024 passed by learned Judicial Magistrate Ist Class, Pehowa in Complaint No.NACT-306 of 2020 under Section 138 of the Negotiable Instrument Act

to the extent, whereby, the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the compensation amount awarded by the trial Court within 60 days, from date of passing of said order.

2. The present complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act) was filed by the complainant alleging that the accused took loan from the complainant and had issued cheque bearing No.010044 dated 01.08.2020 amounting to Rs.4,00,000/- of Axis Bank, Pehowa to discharge his legal liability towards the complainant. On presentation of the same, it was dishonoured and returned with the remarks 'funds insufficient' vide memo dated 26.10.2020.

3. Vide judgment and order dated 20.11.2024/ 21.11.2024 passed by learned trial Court, the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year and to pay compensation of the cheque amount i.e. Rs.3,00,000/- along with interest for commission of offence punishable under Section 138 of Negotiable Instruments Act. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Kurukshetra. The learned Appellate Court vide order dated 15.01.2025, 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 compensation and such a condition is illegal, arbitrary and in violation of the law as laid

down by the Hon'ble Supreme Court in **Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others, 2023(4) RCR (Criminal) 296**, wherein it was held that-

*"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 Appellate Court was required to consider whether the present case falls in the exception or not.

6. In the present case, while imposing condition of deposit of 20% of compensation amount, the learned Appellate Court has not afforded any opportunity to petitioner to make submissions regarding the exceptional circumstances warranting requirement of waiver of depositing of 20% of compensation amount and imposed the said condition without any such opportunity.

7. Therefore, the impugned order dated 15.01.2025, 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.

8. 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)***.

9. The petition is disposed of accordingly.

10. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(SUKHVINDER KAUR)  
JUDGE

05.05.2025.

*Komal*

|                            |   |         |
|----------------------------|---|---------|
| Whether speaking/reasoned? | : | Yes/ No |
| Whether reportable?        | : | Yes/ No |