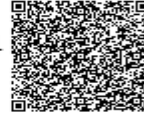


IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:057884



131

CRM-M-23716-2025

Date of decision: 02.05.2025

Anoop Jain and another

...Petitioners

Vs.

Raghav Gupta

...Respondent

CORAM : HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. B.S. Guliani, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.(ORAL)

The present petition under Section 528 BNSS has been filed for quashing of order dated 07.03.2025 (Annexure P-1) passed by the Court of learned Sessions Judge, Ludhiana in an appeal bearing CRA-278 of 2025 arising out of Complaint No.1652-2021 under Section 138 of the Negotiable Instrument Act, 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-firm alleging that the accused had issued two cheques amounting to Rs.10 lakhs each i.e. cheque No.819261 dated 08.12.2020 drawn on Karnataka Bank Limited, Ludhiana and cheque bearing

No. 266037 dated 08.12.2020 drawn on State Bank of India, Daresi Road, Ludhiana, to discharge his legal liability towards the complainant and when these cheques were presented before the bank for encashment the same were dishonoured. Cheque No.819261 was dishonoured vide memo dated 09.12.2020 with the remarks 'Account Closed' and cheque No.266037 was dishonoured vide memo dated 09.12.2020 with remarks "Refer to drawers".

3. Vide judgment and order dated 11.02.2025 passed by learned Judicial Magistrate Ist Class, Ludhiana, the petitioner was convicted and sentenced to undergo simple imprisonment for a period of 02 years for commission of offence punishable under Section 138 of Negotiable Instruments Act and was further directed to pay compensation equivalent to the total cheques amount to the complainant i.e. Rs. 20,00,000/-. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Ludhiana. The learned Appellate Court vide order dated 07.03.2025, 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 petitioners *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 07.03.2025, 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.

02.05.2025
harjeet

(SUKHVINDER KAUR)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No