

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

126

CRM-M-26285-2025 (O&M)

Date of Decision: 26.05.2025.

Vivek Watts

...Petitioner.

Versus

Raj Kumar and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Rhythem Bajaj, Advocate for the petitioner.

SUKHVINDER KAUR, J.

The present petition has been filed for quashing of impugned order dated 11.03.2024 passed by the Court of learned Sessions Judge, Fazilka, in an appeal No.CRA-114-2024, arising out of judgment of conviction and order of sentence dated 12.02.2024 passed by learned Judicial Magistrate Ist Class, Abohar in Complaint No.NACT-177 of 2019 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 three months from the date of the 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 in discharge of his legal liability towards the complainant, issued two cheques bearing No.060903 and No.060904 dated 29.12.2018 amounting to Rs.4,50,000/- each drawn on Axis Bank, Branch Chandigarh. On presentation, the same were

dishonoured and returned with the remarks 'funds insufficient' vide memo dated 29.12.2018.

3. Vide judgment of conviction and order of sentence dated 12.02.2024 passed by learned trial Court, the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of 01 year and 06 months and to pay compensation of Rs.4,50,000/- for commission of offence punishable under Section 138 of Negotiable Instruments Act and in failure of payment of compensation, he shall further undergo simple imprisonment for a period of two months. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Fazilka. The learned Appellate Court vide order dated 11.03.2024 suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within a period of three months from the date 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 a 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 depositing 20% of the 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 20% of the compensation amount and imposed the said condition without any such opportunity.

7. Therefore, the impugned order dated 11.03.2024, whereby, the condition of depositing 20% of the 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 depositing 20% of the compensation amount 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

26.05.2025.

Komal

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