

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

2025:PHHC:070488



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CRM-M-28813-2025 (O&M)

Date of Decision: 23.05.2025.

Amit Gupta

...Petitioner.

Versus

Mayank Jain

...Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Shivansh Malik, Advocate for the petitioner.

SUKHVINDER KAUR, J.

By way of present petition, the petitioner has challenged the order dated 21.03.2025 (Anneuxre P4) passed by the Court of learned Additional Sessions Judge, Rohtak, in an appeal No.CRA-56-2025, arising out of judgment of conviction dated 29.01.2025 and order of sentence dated 31.01.2025 passed by learned Judicial Magistrate Ist Class, Rohtak in Complaint No. CIS No.COMA-1407-2018 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 till 19.04.2025. The petitioner has also challenged the order dated 17.05.2025 (Annexure P7) passed by the Appellate Court, whereby his application for waiver of deposite of 20% as conditional amount was dismissed.

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 cheque bearing No.816876 dated 03.04.2018 amounting to Rs.6,00,000/- of Punjab National Bank, Jhajjar Road, Rohtak. On presentation of the same, it was dishonoured and returned with the remarks 'funds insufficient' vide memo dated 03.04.2018.

3. Vide judgment of conviction dated 29.01.2025 and order of sentence dated 31.01.2025 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 Rs.7,50,000/- 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, Rohtak. The learned Appellate Court vide order dated 21.03.2025 suspended the sentence of the petitioner subject to depositing 20% of the compensation amount till 19.04.2025. The petitioner also moved an application for waiver of mandatory deposit of 20% of the compensation amount but the said application was summarily rejected by the Appellate Court vide order dated 17.05.2025.

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 deposit of 20% of compensation amount vide order dated 21.03.2025, 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. Vide order dated 17.05.2025, the waiver application was rejected on the premise that in view of bar of Section 403 of BNSS, the appellate Court lacks the power to modify or alter its earlier order dated 24.02.2025. Thus, impugned orders were passed without recording reasons or applying principles laid down in **Jamboo Bhandari (supra)**.

7. Therefore, the impugned order dated 21.03.2025, whereby, the condition of depositing 20% of compensation amount has been imposed for granting suspension of sentence upon the petitioner as well as order dated 17.05.2025, whereby dismissing the application for waiver of mandatory deposit of 20% of the compensation amount are 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

23.05.2025.

Komal

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