

CRM-M-31287-2025
Date of decision: 15.07.2025

...PETITIONER

V/S

...RESPONDENT

Present: Mr. Varun Singh, Advocate for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition under Section 528 of BNSS, 2023 has been filed for quashing of order dated 14.10.2024 (Annexure P-2) passed by the Court of learned Additional Sessions Judge, Faridabad in an appeal CRA No.205 of 2024 titled as '*Arun Chauhan vs. Shiv Narayan Sharma etc.*' filed against the judgment of conviction and order of sentence dated 26/28.07.2022 passed by learned Judicial Magistrate Ist Class, Faridabad in case bearing NACT No.10444 of 2018, whereby, the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the cheque amount.

2. The present complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act) has been initiated by the complainant company with the submissions that after the retirement of the complainant, the petitioner borrowed an amount of Rs.30,95,000/- from him to pay money for purchasing a plot at Aligarh with the assurance to pay the same within one year. In discharge of said liability, petitioner issued a



cheque bearing No.000012 dated 14.09.2018 for an amount of Rs.30,50,000/- drawn on HDFC Bank in favour of the complainant with the assurance that the cheque will be encashed upon its presentation. However, upon presentation, the said cheque was dishonoured with the remarks "Payment Stopped by Drawer" vide return memo dated 19.09.2018. Thereafter, the complainant got issued legal notice dated 03.10.2018 to the petitioner/accused, but he failed to pay the aforementioned amount. Hence, this complaint.

3. Vide judgment of conviction and order on quantum of sentence dated 28.07.2022 passed by learned Judicial Magistrate Ist Class, Faridabad the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year for commission of offence punishable under Section 138 of Negotiable Instruments Act and was further directed to pay compensation to the tune of Rs.40,00,000/- to the complainant within a period of one month from the date of passing of judgment, along with default mechanism. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Faridabad. The learned Appellate Court vide order dated 14.10.2024, suspended the sentence of the petitioner No.2 subject to depositing 20% of the cheque amount.

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 amount and such a condition is illegal, arbitrary and in violation of the law as laid down by the Hon'ble Supreme Court in **Criminal Appeal Nos.2741 of 2023 (@ SLP(Crl.) Nos. 4927 of 2023 *Jamboo Bhandari vs. M.P. State***



Industrial Development Corporation Ltd. and others, decided on 04.09.2023.

Speaking through Justice Abhay S. Oka, it has been held as follows:-

“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 parties and after perusing the judgment passed in ***Jamboo Bhandari (supra)***, the lower Appellate Court was required to consider whether the present case falls in the exception or not. The impugned order dated 14.10.2024 (Annexure P-2) is hereby set aside to the extent of imposing the condition of depositing 20% of cheque amount. The learned Ist 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.

6. 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)***.

7. The petition is disposed of accordingly.

July 15, 2025
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No