



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

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CRM-M-31603-2025

Date of decision: 04.06.2025

Sarwan Kumar

...Petitioner

VERSUS

Ravi Choudhary @ Rajiv Kumar

...Respondent

CORAM : HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Manoj Kumar, Advocate for the petitioner.

SUKHVINDER KAUR, J.(ORAL)

The present petition under Section 528 BNSS has been filed for modification of order dated 09.04.2025 (Annexure P-2) passed by the Court of learned Additional Sessions Judge, Faridabad in an appeal bearing CRA-252 of 2025 arising out of judgment dated 10.03.2025 passed in Criminal case No.NACT-957-2019 titled as Rajiv Choudhary @ Rajiv Kumar Vs. Sarwan Kumar, 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 cheque amount as compensation within 60 days.

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 with the submissions that the petitioner had received a sum of Rs.20,00,000/- from the respondent as earnest money at the time of execution of agreement to sell dated 24.05.2018 qua H.No.85, Sector 29, HUDA, Faridabad. Thereafter, petitioner was not interested to sell the aforesaid property, as he wanted to reside in said house and in order to

discharge his legal liability he had issued a cheque bearing No.095290 on 10.12.2018 amounting to Rs.15,00,000/- drawn on Punjab National Bank, Old Faridabad Branch. On presentation of the same, it was dishonoured and returned with the remarks 'funds insufficient' vide memo dated 19.12.2018.

3. Vide judgment and order dated 10.03.2025 passed by learned Judicial Magistrate First Class, Faridabad, the petitioner was convicted and sentenced to undergo imprisonment for a period of 01 year for commission of offence punishable under Section 138 of Negotiable Instruments Act with a direction that the accused will pay compensation of Rs.30,00,000/- amount to the complainant so as to compensate the complainant for the harassment on account of dishonour of the cheque in question. 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 09.04.2025, 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 **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 petitioner 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 09.04.2025, 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.

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.

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

04.06.2025
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(SUKHVINDER KAUR)
JUDGE

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