

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

2025:PHHC:075505



119

CRM-M-31669-2025 (O&M)

Date of Decision: 04.06.2025.

Sonia

...Petitioner.

Versus

Satish Kumar and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Piyush Aggarwal, Advocate for the petitioner.

SUKHVINDER KAUR, J. (Oral)

By way of present petition, the petitioner has challenged the order dated 28.05.2025 (Anneuxre P1) and order dated 29.05.2025 (Annexure P8) passed by the Court of learned Additional Sessions Judge, Jhajjar, in an appeal No.CRA-160-2023, arising out of judgment of conviction dated 04.07.2023 and order of sentence dated 10.07.2023 passed by learned Judicial Magistrate Ist Class, Jhajjar in Complaint No.COMA-122-2017 under Section 138 and 142 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 within 7 days. The petitioner has also challenged the order dated 29.05.2025 (Annexure P8) passed by the Appellate Court, whereby his application for exemption 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 two post dated cheques 428184 and 584442 amounting to Rs.20,00,000/-(Rs.12 lacs + Rs.8 Lacs) drawn at Corporation Bank, Branch Jhajjar and Oriental Bank of Commerce, Branch B-1, Basant Kunj, New Delhi. On presentation of the same, the same were dishonoured and returned with the remarks 'funds insufficient' vide memo dated 04.04.2017.

3. Vide judgment of conviction dated 04.07.2023 and order of sentence dated 10.07.2023 passed by learned trial Court, the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year and to return the amount of cheques i.e. Rs.20,00,000/- and to pay compensation of Rs.2,00,000/- 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, Jhajjar. The learned Appellate Court vide order dated 08.08.2023 suspended the sentence of the petitioner. On 05.04.2025, respondent No.1 moved an application under Section 148 of N.I. Act alleging that the petitioner was under obligation to pay 20% of the cheque amount. Vide order dated 28.05.2025, learned Additional Sessions Judge, directed the petitioner to deposit 20% of the compensation amount as the same was the condition, which was imposed upon the petitioner at the time of granting suspension of sentence by learned trial Court.

4. Thereafter, upon moving of the application for exemption for depositing the 20% of the compensation amount, the appellate Court vide order dated 29.05.2025 held that the Court cannot review its own order, as waiver will also tantamount to reviewing of order and the said application

was dismissed. Rs.2,00,000/- were received by the complainant/ respondent from the petitioner out of interim compensation subject to final outcome of the present appeal and 07 days time was granted to the petitioner to make payment of remaining amount of compensation on or before 05.06.2025.

5. Learned counsel for the petitioner *inter alia* contended that vide order dated 28.05.2025, the petitioner was directed to deposit 20% of the compensation amount only on the basis of assumption that while granting suspension of sentence by trial Court, a condition had been imposed to deposit 20% of the compensation amount, which was not complied by the petitioner and held that the non compliance of the same ought to have resulted into vacation of suspension of sentence. He vehemently contended that the same is absolutely wrong as no such condition was imposed by learned Appellate Court at the time of admission of appeal and adjudication of application for suspension of sentence. Learned Appellate Court completely overlooked the settled law that reasons have to be recorded while directing the petitioner to deposit 20% of the cheque amount, as rule under Section 148 of N.I. Act, is not an absolute rule and reasons have to be recorded as to why it is mandatory for the petitioner to deposit 20% of the cheque amount. This fact was also ignored that the petitioner had already deposited Rs.2,00,000/- on 29.05.2025. Learned Appellate Court passed the impugned orders in very casual manner without recording any reasons, which are liable to be set aside.

6. The Hon'ble Supreme Court in *Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others, 2023(4) RCR (Criminal) 296*, held as under-

"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."

7. 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. Vide order dated 29.05.2025, the waiver application was rejected on the premise that the appellate Court lacks the power to modify or alter its earlier order. Thus, impugned orders were passed without recording reasons or applying principles laid down in **Jamboo Bhandari (supra)**.

8. Therefore, the impugned order dated 28.05.2025, whereby learned Additional Sessions Judge, directed the petitioner to deposit 20% of the compensation amount as the same was the condition, which was imposed upon the petitioner at the time of granting suspension of sentence by learned trial Court, as well as order dated 29.05.2025, dismissing the application for exemption for depositing of 20% of the compensation amount, are hereby set aside.

9. 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)*.

10. The petition is disposed of accordingly.
11. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(SUKHVINDER KAUR)
JUDGE

04.06.2025.

Komal

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