

CRM-M-39183-2025
Date of decision: 24.07.2025

...PETITIONER

V/S

...RESPONDENT

Present: Ms. Pallavi Babbar, 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 19.04.2025 (Annexure P-3) passed by Court of learned Additional Sessions Judge, Palwal in an appeal CRA No.89 of 2025 titled as '*Gaurav Kumar Jha vs. Karambir*' filed against the judgment of conviction and order of sentence dated 21.03.2025 passed by learned Judicial Magistrate Ist Class, Hodal in case bearing NACT No.184 of 2020, whereby, the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the compensation amount within a period of one month.

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 purchased land of the complainant. Thereafter, to pay the sale consideration, he issued cheques bearing Nos.039044 dated 14.09.2020; 039045 dated 08.09.2020. 039046



dated 01.09.2020 of Rs.5 lakhs each drawn on Axis Bank, Faridabad in favour of the complainant with the assurance that the cheques will be encashed upon their presentation. However, upon presentation, the said cheques were dishonoured with the remarks "Funds Insufficient" vide return memos dated 15.09.2020, 11.09.2020 and 04.09.2020. Thereafter, the complainant got issued legal notice dated 23.09.2020 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 21.03.2025 passed by learned Judicial Magistrate Ist Class, Hodal, 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.15,00,000/- to the complainant, 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, Palwal. The learned Appellate Court vide order dated 19.04.2025, suspended the sentence of the petitioner subject to depositing 20% of the compensation 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 19.04.2025 (Annexure P-3) 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 24, 2025
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(HARPREET SINGH BRAR)
JUDGE

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