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

CRM-M-40300-2025

Date of decision : 29.07.2025

Joli**.....Petitioner****versus****State of Punjab and another****.....Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Imran Farooqi, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

1. Prayer in the present petition has been made for quashing of impugned order dated 29.03.2025 (Annexure P-3) passed by learned Additional Sessions Judge, Malerkotla in case No.CRA/46 of 2025 titled as 'Joli Vs. Gurpreet Kaur', arising out of complaint case bearing NACT No.558 of 2021 dated 03.09.2021 (Gurpreet Kaur Vs. Joli), under Section 138 of Negotiable Instruments Act, 1881. Further prayer has been made for staying the operation of the impugned order dated 29.03.2025.

2. It has been contended by learned counsel for the petitioner that the petitioner was prosecuted by respondent No.2 in complaint under Section 138 of Negotiable Instruments Act. He submits that on conclusion of the trial, the petitioner was convicted by the learned Judicial Magistrate First Class, Malerkotla under Section 138 of NI Act vide order dated 04.10.2024 and the petitioner was sentenced to undergo simple imprisonment for a period of 06 months and to pay fine to the tune of the cheque amount. He submits that aggrieved by the same, the petitioner assailed the same by way of filing of an appeal before the learned Appellate Court. It is submitted that the learned Appellate Court vide



impugned order dated 29.03.2025 had suspended the sentence during the pendency of the appeal and stayed the payment of fine subject to condition of depositing 20% of total amount of compensation as imposed by the trial Court. He submits that the imposition of condition of paying 20% of the compensation is violative of the law settled and thus, the same deserves to be set aside. He submits that the learned Appellate Court has not applied its judicious mind in passing the impugned order. It is submitted that no condition can be imposed for entertaining the appeal as it is a statutory right which cannot be curtailed by imposing any condition. It is submitted that the order passed by learned Appellate Court is non-speaking and assigns no reason for imposing the condition of payment of 20% of compensation amount. He submits that as per the provisions of Section 148 of the NI Act, the imposition of condition of 20% is not mandatory. To substantiate his arguments, he relied upon the judgments passed in '*Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi, 2020(3) RCR Criminal 186*', '*Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. And others, 2023 (4) RCR (Criminal)*' and '*Harwinder Singh Vs. Mohan Lal (P&H High Court, 10.11.2021)*'. He thus, submits that the impugned order passed is unsustainable in the eyes of law being in contravention to the law settled and has been passed in a mechanical manner. He thus, submit that same deserves to be set aside.

3. The Court has heard counsel for the petitioner and perused the record. The precise submission made by counsel for the petitioner is that imposition of condition of 20% of compensation amount is unsustainable in the eyes of law. For resolving the controversy involved in the present case, appreciation of provisions of Section 148 of the Act, is



required, which reads as under:-

“Section 148: Power of Appellate Court to order payment pending appeal against conviction. 148.

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court: Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.
- (2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.
- (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.]”

4. Hon'ble Supreme Court in *Jamboo Bhandari (supra)*, has made the following observations with respect to Section 148 of the NI



Act:

“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 accused 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 conclusion must be recorded.*” (emphasis added)

5. There is no dispute regarding the law cited by the learned counsel for the petitioner as held by the Hon’ble Supreme Court. However, it is apparent that imposition of 20% condition has been provided in the statute itself, though it has been held that it is not mandatory. The Court is to take into consideration the attending facts and circumstances like the financial capacity etc. of the appellant and then draw the conclusion of same. On perusal of the impugned order, it is deciphered that the learned Appellate Court had duly appreciated the submissions raised by counsel for the petitioner. It is on the appreciation of the submissions raised, learned Appellate Court had passed the impugned order. Thus, the contention raised by counsel for the petitioner before this Court that the impugned order is not a speaking order and has been passed without hearing the petitioner, is totally misconceived. The



learned Court below has passed a detailed order after duly considering the ratio of the judgment of *Jamboo Bhandari (supra)* and highlighting how the stand of the petitioner does not spell out exceptional circumstances and this Court finds no perversity in the same.

6. Thus, in the considered opinion of this Court, the order has been passed by learned Appellate Court in view of the law settled. Hence, having no infirmity found in the impugned order, the present petition is hereby dismissed.

29.07.2025

ps-I

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(RAJESH BHARDWAJ)
JUDGE