

S. No.117

2025:PHHC:103528



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

**CRM-M-43088 of 2025
Date of Decision:11.08.2025**

Mohammed Waris (Hashim)

.....Petitioner

Vs.

Hisar Steel Private Limited and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Hitesh Verma, Advocate for the petitioner.

Yashvir Singh Rathor, J. (Oral)

1. The present petition under Section 528 of BNSS, 2023 has been filed for quashing of order dated 16.01.2025 (Annexure P-6) passed by Court of learned Additional Sessions Judge, Hisar in criminal appeal bearing CRA No.20 of 2025 titled '*KGN Metal Traders and another Vs. Hisar Steel Pvt. Ltd.*' filed against the judgment of conviction and order of sentence dated 19.12.2024 passed by learned Judicial Magistrate Ist Class, Hisar in case bearing Criminal Complaint No.1276-CII of 2019, whereby, sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the compensation amount within a period of 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 complainant is a private limited company incorporated under the Indian Companies Act having its Head Office at Rajpur Road, Hisar. Petitioner purchased S.S. Pipes from the complainant vide Invoice No.106 dated 27.04.2019 for Rs.21,08,098/- on credit.



He made a payment of Rs.09,07,199/- as advance and the balance amount of Rs.12,00,899/- remained to be paid. Thereafter, in discharge of his liability, he issued cheque bearing No.257863 dated 07.05.2019 of Rs.12,00,000/- drawn on Syndicate Bank, Majhola, Moradabad 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 “Kindly Contact Drawer” vide bank memo dated 09.05.2019. Thereafter, the complainant issued legal notice dated 28.05.2019 to the petitioner/accused, but he failed to pay the aforementioned amount and the complaint was instituted.

3. Vide judgment of conviction and order on quantum of sentence dated 19.12.2024 passed by learned Judicial Magistrate Ist Class, Hisar, 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, i.e. Rs.18,00,000/- 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, Hisar. The learned Appellate Court vide order dated 16.02.2025, suspended the sentence of the petitioner subject to depositing of 20% of the compensation amount.

4. Learned counsel for the petitioner *inter alia* contends that the learned 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 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 in which it has been 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 an petitioner who has been convicted for offence under Section 138 of a 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.”



5. In view of the law laid down in ***Jamboo Bhandari (supra)***, the Appellate Court was required to consider whether the present case falls within the exception or not but no such reasons have been recorded. The impugned order dated 16.01.2025 (Annexure P-6) is thus not sustainable and hereby set aside to the extent of imposing the condition of depositing 20% of compensation amount. The learned 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 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.

(Yashvir Singh Rathor)
Judge

August 11, 2025
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No