



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

CRM-M-4365-2025
Date of decision: 27.01.2025

Fortune Graphics Ltd. and another ...Petitioners

Versus

M/s R.K. Fabrics ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Abhishek Khullar, Advocate for the petitioners.

KARAMJIT SINGH, J. (ORAL)

1. The present petition under Section 482 Cr.P.C. has been filed for setting aside of order dated 18.10.2024 (Annexure P-3) passed by the Court of Additional Sessions Judge, Ludhiana in CRA-13844/2024 titled as Fortune Graphics Limited and another Vs. M/s R.K. Fabrics whereby the sentence of the petitioners under Section 138 of Negotiable Instruments Act has been suspended subject to the condition to deposit 20% of cheque amount, within a period of one month.

2. The counsel for the petitioners submits that respondent filed criminal complaint under Section 138 of NI Act against the petitioners wherein on conclusion of trial, the petitioners were convicted and sentenced to RI for a period of one year under Section 138 NI Act vide judgment and order dated 16.09.2024 by the Court of Judicial Magistrate Ist Class, Ludhiana. Being aggrieved, petitioners have preferred an appeal against the said judgment and order and the Appellate Court vide order dated 18.10.2024 has admitted the appeal and also disposed of application seeking



suspension of sentence with direction to the petitioners to deposit 20% of the cheque amount, as per provision of Section 148 of the NI Act.

3. Learned counsel for the petitioners further 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 in a mechanical manner, without assigning any reasons 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, wherein it was observed 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.”

4. The counsel for the petitioners has further contended that proceeding against petitioner No.1 are initiated under Section 7 of Insolvency and Bankruptcy Code and NCLT, New Delhi has passed order Annexure P-4 dated 04.05.2018 and appointed interim resolution professional. That even on this ground, the impugned order is not sustainable. In this context counsel for petitioners has referred to decision of Madras High Court in Crl.O.P. No.947-2024 ***C.R.Bala Subramanian Vs. P.Eswaramoorti*** dated 12.01.2024

5. I have heard the counsel for the petitioner and gone through the



impugned order and the case law referred by counsel for the petitioner and is of the view that the impugned order dated 18.10.2024 to the extent whereby petitioner is directed to deposit 20% of the cheque amount is not passed by the Appellate Court in accordance with the settled position of law, as discussed above. While passing the said direction, the Appellate Court has not referred to the ratio laid down by Hon'ble Supreme Court in ***Jamboo Bhandari's case (supra)*** and no reason is given by the said Court while issuing aforesaid directions. In the light of the ratio laid down in ***Jamboo Bhandari's case (supra)***, coupled with the order Annexure P-4 passed by NCLT, Delhi, the appellate Court was required to consider whether the case of the petitioner falls under exception or not.

6. For the foregoing reasons, the impugned order dated 18.10.2024 to the extent whereby the condition of depositing of 20% of cheque amount for the purpose of suspension of sentence, is hereby set aside. The Appellate Court is directed to re-consider the same after giving opportunity of hearing to the petitioner and then to pass appropriate order in accordance with the law laid down in ***Jamboo Bhandari's case (supra)*** and order Annexure P-4 passed by NCLT, New Delhi and till then not to take any coercive action against the petitioners. The petitioners are directed to appear before the Appellate Court on the next date fixed in the appeal.

7. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent. However, if he feels dis-satisfied with this order, he may move an application to recall the same.

27.01.2025

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No