



**123+242 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-1671-2025 in/and
CRM-M-64806-2024
Date of decision: 17.01.2025**

ASHOK KUMAR

...PETITIONER

V/S

CHANDER BHAN AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ajit Sihag, Advocate for the petitioner.
Mr. Monu Sharma, Advocate for
Mr. Ankur Malik, Advocate for respondent No.1.
Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

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Present application has been filed under Section 528 BNSS for placing on record the copy of affidavit dated 09.01.2025 as Annexure P-4.

For the reasons stated in the application, the same is allowed.

Annexure P-4 is taken on record subject to all just exceptions.

MAIN CASE

1. The present petition under Section 528 BNSS has been filed for setting aside of order dated 23.10.2024 (Annexure P-3) passed by learned Additional Sessions Judge, Jind in CRA-190 of 2024, whereby the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the cheque amount as compensation within 60 days.

2. The complainant's case in brief is that on 11.05.2012 the complainant made a written agreement with the petitioner in presence of two witnesses for purchase of plot No.38 measuring 216.66 Sq. yards in Tehsil Gharaunda, District Karnal for consideration amount of Rs.14,29,956/- for said plot and made payment in advance of Rs.4,50,000/- on 11.05.2012. Thereafter,



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the complainant made full payment and got executed an agreement dated 23.10.2012 amounting to Rs.14,29,956/- and made balance payment of Rs.9,79,956/- for said plot on 23.10.2012. However, the petitioner did not get executed registered deed in his name and told the complainant that registration deeds are banned by the government and will be executed shortly. When the complainant visited the site, he came to know that the said plot has been sold fraudulently to some other person, without the consent and knowledge of the complainant. Thereafter, when the complainant asked the petitioner to return the above-mentioned plot or make payment of the said plot, the petitioner/accused did not care and after some time, he refused to make the payment or return the plot. When the complainant made a complaint bearing No.130371 dated 12.12.2019 against the petitioner, a compromise dated 23.12.2019 was effected between the parties for an amount of Rs.18,32,000/-, which was to be paid by the petitioner to the complainant, for which, he delivered five post dated bank cheques for Rs.3,00,000/-, Rs.3,32,000/-, Rs.4,00,000/-, Rs.4,00,000/- and Rs.4,00,000/- bearing Nos.386631, 386638, 386640, 386642, 386644 respectively, with affidavit duly attested and it was fully assured that if any cheque will be bounced the complainant would be at liberty to file complaint or take legal action against the petitioner. When the complainant presented the cheque bearing No.386642 dated 30.03.2021 of Rs.4,00,000/- for encashment, the same was returned dishonoured on account of "Funds Insufficient" vide return memo dated 31.03.2021. Thus, the petitioner committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, this complaint.

3. Vide judgment and order dated 30.09.2024 passed by learned



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Judicial Magistrate Ist Class, Jind, the petitioner was sentenced to undergo simple imprisonment for a period of nine months for commission of offence punishable under Section 138 of Negotiable Instruments Act and was further directed to pay compensation to the tune of Rs.4,84,000/-. However, it was made clear that the amount, if any, already paid by the convict to the complainant during the trial of the present case, be set off from the amount of compensation. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Jind. The learned Appellate Court vide order dated 23.10.2024, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within 60 days of passing of the order.

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 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.



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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 petitioner 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 23.10.2024, whereby, the condition of depositing 20% of compensation amount has been imposed for granting suspension of sentence is hereby set aside. The learned lower 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 revision petition is disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

January 17, 2025
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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |