



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

134-2

CRM-M-8722-2025 (O&M)

Date of decision: 17.02.2025

Amnish Khunger

....Petitioner

Versus

Harbans Singh Popli

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is for quashing of order dated 19.11.2024 (Annexure P-2) passed by learned Additional Sessions Judge, Fazilka, vide which the petitioner was directed to deposit 20% of the compensation amount.

2. The brief facts of the case are that the petitioner in discharge of his legal liability towards the complainant, issued a cheque No.160157 dated 25.05.2018, for ₹5,00,000 from his Axis Bank Limited account, assuring the complainant that it would be honored upon presentation. However, when the complainant presented the cheque, it was returned due to "Funds Insufficient." Upon informing the petitioner about the dishonor, the petitioner allegedly admitted to issuing the cheque with the intention of causing wrongful loss to the complainant. Following this, the complainant sent a legal notice on



06.07.2018, to the petitioner demanding payment within 15 days, but the petitioner failed to respond. Consequently, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act') was filed against the accused/petitioner. Thereafter the petitioner was summoned and thereafter, he was released on bail and later on, he was convicted by the learned Judicial Magistrate Ist Class, Fazilka, vide judgment dated 24.10.2024 and he was sentenced to undergo RI for a period of 02 years and to pay the compensation twice the cheque amount i.e. Rs.10,00,000/- to the complainant and in default of payment to further undergo simple imprisonment for a period of 03 months. Thereafter, the petitioner filed an appeal against the said judgment and order dated 24.10.2024, which stands admitted and is pending adjudication before the learned Additional Sessions Judge, Fazilka, however, vide impugned order dated 19.11.2024 (Annexure P-2), the petitioner was directed to deposit 20% of the compensation amount within a period of 90 days. Against the said order (Annexure P-2), the petitioner has approached this Court by way of instant petition.

3. Learned counsel for the petitioner *inter alia* contends that while allowing the application of the petitioner seeking suspension of sentence, imposition of condition to deposit 20% of the compensation amount is unjust and arbitrary and against the proposition of law settled in the judgment passed by the Hon'ble Supreme Court in ***Jamboo Bhandari Vs. MP Industrial Development Corporation Ltd. and others 2013 (12) SCALE 611***, wherein it is held that deposit of



minimum 20% of the compensation amount is not an absolute rule. It is further contended that deposit of 20% of the compensation amount cannot be a condition precedent, while allowing bail to the petitioner and the learned Appellate Court ought to have considered the exceptional circumstances for waiving off the said condition.

4. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the learned Appellate Court has passed the impugned order without considering the exceptional circumstances *qua* imposition of condition of deposit of 20% of the compensation amount.

5. A two Judge Bench of the Hon'ble Supreme Court in ***Jamboo Bhandari's case*** (supra), speaking through Justice Abhay S. Oka has 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 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.”

6. In view of the settled law, the learned Lower Appellate Court was required to consider whether the present case falls in the exception or not. Consequently, the impugned order dated 19.11.2024 (Annexure P-2) is set aside to the extent of imposition of condition of depositing 20% of the compensation amount and the matter is remanded back to the learned Lower Appellate Court to re-examine the case after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances, which warrants waiver of the requirement of deposit of 20% of the compensation awarded by the learned trial Court, in the light of judgment passed by the Hon'ble Supreme Court in *Jamboo Bhandari's case (supra)*.

7. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

17.02.2025

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No