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

CRM-M-44083-2025

Date of decision :13.08.2025

Jitender Kumar

.....Petitioner

Versus

Naresh Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Nirmaljeet Singh Sidhu, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for quashing of impugned order dated 09.05.2025 (Annexure P-3), passed by Ld. Additional Sessions Judge, Rohtak in case No.CRA/136/2025 titled as 'Jitender Kumar Vs. Jagmohan Saini', whereby the learned Appellate Court has imposed condition of the outcome of the application filed by the present petitioner for waiving 20% of the cheque amount. Further to set aside the impugned order dated 30.07.2025, whereby Ld. Appellate Court has directed the petitioner to deposit 20% amount of cheque amount within a week and further to set aside the impugned order dated 05.08.2025, whereby the Ld. Court has set aside its own order of suspension of sentence and cancelled the bail of the petitioner.

2. Learned counsel for the petitioner has stated that petitioner was prosecuted in a complaint under Section 138 of the NI Act and he was convicted by learned Judicial Magistrate Ist Class, Rohtak, vide judgment dated 10/12.03.2025 and sentenced to undergo simple imprisonment for



03 months and was ordered to pay compensation of Rs.2,00,000/-. It is further submitted that against the order dated 10/12.03.2025, the petitioner filed an appeal along with an application for waiving off 20% of the cheque amount, before the Court of learned Additional Sessions Judge at Rohtak. Learned Appellate Court vide its impugned order dated 09.05.2025 (Annexure P-3) suspended the sentence of petitioner subject to his deposit 20% of the compensation amount with aid of Section 148 of the NI Act and issued notice to the complainant in the application for waiving off 20% of the cheque amount. However, due to financial constraints, the petitioner failed to comply with the order dated 09.05.2025 and the Ld. Appellate Court vide its impugned order dated 30.07.2025 dismissed the application filed by the petitioner for the waiver of 20% of cheque amount and subsequently, due to non-deposit of 20% of the cheque amount, order dated 09.05.2025 vide which the sentence of the petitioner suspended, was set aside vide its order dated 05.08.2025. Thus, the learned Appellate Court has not afforded any opportunity to the petitioner to put forward his case and as such the Appellate Court has failed to follow the mandate of Hon'ble Supreme Court given in **Jamboo Bhandari vs M.P.State Industrial Development Corporation Ltd. and others, 2024(1) SCC (Cri) 90**. He prays that the petitioner be granted one opportunity to present his case before the Appellate Court and then pass fresh order after considering his contentions as well as the mandate of Hon'ble Supreme Court. He has further stated that in the **Jamboo Bhandari's** case (supra), it has been held that 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 NI 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, which is missing in the present case.

3. Heard.

4. After hearing counsel for the petitioner and perusing the record, it is apparent that the application filed by the petitioner for waiving off 20% of the cheque amount was dismissed vide order dated 30.07.2025, however, he was granted one week time to deposit the same. Due to financial constraints, the petitioner failed to comply with the order dated 30.07.2025 and thus, vide order dated 05.08.2025, Ld. Appellate Court set aside the order dated 09.05.2025, vide which sentence of the petitioner was suspended without affording any opportunity to the petitioner to explain his position and as such, the same is against the mandate of Hon'ble Supreme Court in ***Jamboo Bhandari's case (supra)***.

5. In view of the aforesaid facts, and the judicial precedent settled by Hon'ble Apex Court in ***Jamboo Bhandari's case (supra)***, without commenting anything on the merits of the case, the present petition is disposed of. Petitioner is relegated to approach the learned Appellate Court concerned and file an appropriate application before it, which would be decided, by taking into consideration the law laid down by the Hon'ble Apex Court in ***Jamboo Bhandari's case (supra)*** in this regard, within one month from the date of filing of the application. The direction given in the order dated 09.05.2025 by learned Appellate Court



to the extent of depositing 20% of compensation, is set aside and subsequently, the orders dated 30.07.2025 and 05.08.2025 are also set aside. The petitioner shall continue to be on bail as per order dated 09.05.2025 of learned Appellate Court till the above-said application is disposed of by it.

13.08.2025

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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No