

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:097266



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CRM-M-40249-2025 (O&M)

Date of Decision: 31.07.2025.

Shri Balaji Construction and Material and another ...Petitioners.

Versus

M/s Niranjan Pershad Jai Gopal ...Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Arun Chander Sharma, Advocate
for the petitioners.

SUKHVINDER KAUR, J.

The present petition under Section 528 BNSS has been filed for quashing of order dated 03.06.2025 (Annexure P-4) passed by the Court of learned Additional Sessions Judge, Ambala, in an appeal bearing CRA-179 of 2025, whereby, while suspending the sentence of the petitioner, awarded to him in complaint filed under Section 138 of NI Act, 1881, learned Court below directed the petitioner to deposit 20% of the compensation amount on or before the next date.

2. The present complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act) was filed by the complainant alleging that the accused in discharge of his legal liability towards the complainant, issued cheque bearing No.010691 dated 23.08.2017 amounting to Rs.5,35,594.50/- drawn on Central Bank of India, Ambala. On presentation, the same was dishonoured and returned with the remarks 'funds insufficient' vide memo dated 30.08.2017.

3. Vide judgment of conviction dated 01.05.2025 and order of sentence dated 02.05.2025 passed by learned Judicial Magistrate Ist Class, Ambala, the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months for commission of offence punishable under Section 138 of Negotiable Instruments Act and in failure of payment of compensation, he shall further undergo imprisonment for a period of six months. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Ambala. The learned Appellate Court vide order dated 03.06.2025 suspended the sentence of the petitioner subject to depositing 20% of the compensation amount on or before the next date.

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 in mechanical manner, without assigning the reasons that why the case of the petitioner is not comes under the exceptions as per the judgments of Hon'ble Supreme Court. The impugned order has been passed by learned Additional Sessions Judge by not properly considering the judgment of Hon'ble Supreme Court in **Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others, 2023(4) RCR (Criminal) 296**, wherein it was held that-

"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 a 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.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applied under Section 389 of Cr.P.C. for suspension of sentence he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exceptions or not."

5. Having heard learned counsel for the petitioner and after perusing the judgment passed in **Jamboo Bhandari (supra)**, the Appellate Court was required to consider whether the present case falls in the exception or not.

6. In the present case, while imposing condition of depositing 20% of the compensation amount, the learned Appellate Court has not afforded any opportunity to petitioner to make submissions regarding the exceptional circumstances warranting requirement of waiver of depositing 20% of the compensation amount and imposed the said condition without any such opportunity.

7. Therefore, the impugned order dated 03.06.2025, whereby, the condition of depositing 20% of the compensation amount has been imposed

for granting suspension of sentence upon the petitioner 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 depositing 20% of the compensation amount awarded by learned trial Court.

8. 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)*.

9. The petition is disposed of accordingly.

10. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(SUKHVINDER KAUR)
JUDGE

31.07.2025.

Komal

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