



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

**CRM-M-22768-2025
Date of decision: 30.04.2025**

RAVINDER JAIN AND ANOTHER

...PETITIONERS

V/S

ANIL KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Viren Sibal, Advocate with
Mr. Satyam Sharda, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition under Section 528 of BNSS, 2023 has been filed for quashing/setting aside of order dated 20.03.2025 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Nuh in an appeal CRA No.37 of 2025 titled as '*Ravinder Kumar Jain and others vs. Anil Kumar*' filed against the judgment dated 20.02.2025 passed by learned Judicial Magistrate Ist Class, Nuh in NACT-73 of 2017, whereby, the sentence of the petitioner No.1 was suspended conditionally by imposing a condition to deposit 20% of the compensation amount within two months.

2. The present complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act) has been initiated by the complainant-Anil Kumar with the submissions that on 27.12.2010, he gave a loan of Rs.25 lakhs and on 03.03.2011, gave an amount of Rs.50 lakhs by way of bank transfer (RTGS) from his bank account to the petitioners. As such, in discharge of legal debt and liability, the petitioner No.1 issued cheque bearing No.040541 dated 31.03.2014 for an amount of Rs.75 lakhs drawn on



State Bank of Bikaner and Jaipur, Faiz Road, Karol Bagh, New Delhi in favour of the complainant with the assurance that the cheque will be encashed upon its presentation. Thereafter, petitioner No.1 again took a loan from the complainant for a sum of Rs.50 lakhs and further, he had purchased the building material in the sum of Rs.75 lakhs from the complainant. As such, the outstanding amount became Rs.1,25,00,000/- towards the petitioners. Hence, in discharge of legal debt and liability, the petitioner No.1 again issued cheque bearing No.040542 dated 23.03.2017 for an amount of Rs.1,25,00,000/- in favour of the complainant with the assurance that the cheque will be encashed upon its presentation. However, upon presentation, the said cheque was dishonoured with the remarks "Funds Insufficient" vide return memo dated 27.03.2017. Thereafter, the complainant got issued legal notice dated 07.04.2017 to the petitioners/accused, but they failed to pay the aforementioned amount. Hence, this complaint.

3. Vide judgment of conviction dated 20.02.2025 and order on quantum of sentence dated 21.02.2025 passed by learned Judicial Magistrate Ist Class, Nuh the petitioner was convicted and sentenced to undergo simple imprisonment for a period of 18 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.10,00,000/- and cheque amount of Rs.1,25,00,000/- (total Rs.1,35,00,000/-) to the complainant within a period of two months, in default of payment of compensation amount, the petitioner was further directed to undergo simple imprisonment for three months. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Nuh. The



learned Appellate Court vide order dated 20.03.2025, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within two months 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 amount 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.

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 20.03.2025 is hereby set aside to the extent of imposing the condition of depositing 20% of compensation amount. 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 petition is disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

April 30, 2025
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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |