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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 14.01.2025

KESAR SINGH

.. Petitioner

Vs.

M/S MOHIT COMMISSION AGENT

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Himanshu Chhabra, Advocate for the petitioner.

...

SUMEET GOEL, J. (Oral)

1. The present revision petition has been preferred by the petitioner impugning the order dated 18.12.2024 passed by the learned Additional Sessions Judge, Sangrur, to the extent, that the execution of sentence and order appealed against has been suspended qua the petitioner (herein) subject to depositing of 20% of the amount of compensation. The relevant portion of the impugned order reads thus:

“Present: Shri G.S. Nandpuri, Advocate, counsel for appellant.

This appeal is received by way of entrustment. Heard. Since there are fairly arguable points involved in this appeal, as such, the same is admitted for hearing subject to all just exceptions. It be registered. Notice of the appeal be given to the respondent for 12.03.2025. Trial Court record be summoned for the said date.

Alongwith the appeal, an application for suspending the sentence of imprisonment and to release the appellant on bail till the disposal of the appeal, has also been filed. Appellant/accused was convicted by the learned trial court under Section 138 of Negotiable Instrument Act vide Judgment of conviction and order of sentence dated 19.11.2024 and he was sentenced to undergo imprisonment for a period of two years and to pay the compensation equivalent to the amount of the cheque in question i.e. Rs.4,40,000/- vide order of sentence dated 19.11.2024. The compensation amount imposed by the trial Court has not been deposited by the appellant/accused. The disposal of appeal is likely to take sufficient time. Accordingly, the substantive sentence of the appellant is suspended during pendency of the appeal and appellant is ordered to be released on bail on his furnishing bail bonds in the sum of Rs.50,000/- with one surety

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of the like amount to the satisfaction of Ilaqa/Duty Magistrate within 15 days from today, with the direction to the appellant to appear in Court on each and every date of hearing.

Perusal of the judgment dated 19.11.2024 further reveals that the accused is directed to pay compensation to the tune of Rs. 4,40,000/-. Therefore, in the light of the amended provision of Section 148 of the NI Act and the judgment of the Hon'ble Supreme Court in Criminal appeal Nos. 917-944 of 2019 (arising out of SLP (Criminal) Nos. 4948-2975/2019 Surinder Singh Deswal @ Col. S.S.Deswal Versus Virender Gandhi decided on 29.05.2019, the appellant is directed to deposit 20% of the total amount of compensation-awarded by the trial Court, with trial Court within 60 days from today.

If the accused fails to pay the 10% of total compensation amount within the stipulated period, the order of suspension shall automatically stand vacated.

Dated: 18.12.2024.

*(Bagicha Singh)
Additional Sessions Judge,
Sangrur.UID No.PB0264.”*

2. Learned counsel for the petitioner has argued that the petitioner is not in a position to deposit the said amount of 20% of the compensation amount as awarded by the trial Court on account of financial difficulty. Learned counsel has further argued that due and requisite opportunity was not afforded to the petitioner before passing of the impugned order dated 18.12.2024 wherein condition for deposit of 20% of the amount of the compensation has been stipulated by the learned Sessions Court. Learned counsel has further iterated that imposition of such condition of deposit of 20% of the amount of compensation as awarded by the learned trial Magistrate would effectively amount to taking away the right of appeal of the petitioner. Thus, it has been submitted that the impugned order be quashed, to the extent, whereby the condition has been imposed for deposit of 20% compensation.

3. I have heard learned counsel for the petitioner and perused the paper-book.

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4. Section 148 of the Negotiable Instruments Act, introduced through the 2018 amendment, empowers appellate courts to mandate the deposit of at least 20% of the fine or compensation amount by the accused as a condition for hearing an appeal against a conviction in cheque dishonour cases under Section 138. This provision aims to address the prolonged litigation faced by complainants and mitigate delays in receiving compensation, ensuring a balance between the accused person's right to appeal and the complainant's right to speedy justice. The amount deposited can be released to the complainant, reflecting the legislative intent to provide timely relief and deter frivolous appeals.

At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors. 2023 (10) SCC 446***; relevant whereof reads 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.

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 applies under Section 389 of the 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 exception or not."

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5. The convict bears the onus of demonstrating exceptional circumstances to persuade the appellate court to waive the mandatory deposit of compensation under Section 148 of the Negotiable Instruments Act. Considering the legislative intent behind the provision, which seeks to expedite justice and alleviate the complainant's hardship due to prolonged litigation, it is generally appropriate for the appellate court to impose this condition when an appeal is filed against a conviction under Section 138. Such a requirement ensures that the complainant is not unjustly deprived of compensation while safeguarding the appellate process from frivolous or dilatory tactics. Under Section 148 of the Negotiable Instruments Act, the requirement to deposit the compensation amount as a condition for appeal is generally mandatory, emphasizing its status as a rule.

The Hon'ble Supreme Court in a judgment titled as ***Muskan Enterprises & Anr. Vs. The State of Punjab 2024 INSC 1046***, has held thus:

“xxxxxx. While there can be no gainsaying that normally the discretion of the Appellate Court should lean towards requiring a deposit to be made with the quantum of such deposit depending upon the factual situation in every individual case, more so because an order under challenge does not bear the mark of invalidity on its forehead, retention of the power of such court not to order any deposit in a given case (which in its view and for the recorded reasons is exceptional) and calling for exercise of the discretion to not order deposit. has to be conceded. xxxxxxxxxxxxxxxxxxxxxxxx”

Ergo, the ratio decidendi of the judgments of the Hon'ble Supreme Court in cases of ***Jamboo Bhandari*** (supra) and ***Muskan Enterprises*** (supra) enunciates that the appellate Court holds the discretion to waive this condition only in exceptional circumstances. Such circumstances must be demonstrated through compelling and substantiated material provided by the appellant-convict. Absent such cogent material, it



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would be in appropriate for appellate Court to impose such condition. This approach ensures adherence to the legislative intent, discouraging frivolous appeals and protecting the interests of the complainant.

5.1. Applying the ratio decidendi of the judgments in the case of ***Jamboo Bhandari*** case (supra) and ***Muskan Enterprises*** (supra), no ground is made out to quash/modify the condition imposed vide the impugned order whereby the petitioner has been directed to deposit 20% of the amount of the compensation as awarded by the learned trial Magistrate. The ground pleaded by the petitioner that he is facing financial difficulty cannot be said to be a ground sufficient enough for carving out an exception from the mandate contained in Section 148 of the Negotiable Instruments Act, 1881. It also cannot be said, in the facts and circumstances of the present case, that imposition of the condition of deposit of 20% of the amount of compensation as awarded by the learned trial Magistrate can be said to be unjust or would amount to effectively taking away the right of appeal of petitioner. Thus, the impugned order does not suffer from any infirmity *nay* legal infirmity calling for any interference by this Court. Accordingly, the petition in hand is dismissed.

6. Pending application(s), if any, shall also stand disposed off.

7. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the appeal pending before the learned Sessions Court.

14.01.2025

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes No
Yes No