



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

**CRM-M-18835-2025
Date of decision: 07.04.2025**

NAWAL KISHORE KHURANA AND ANOTHER

...PETITIONERS

V/S

SUNNY THUKRAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Kumar Banga, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. This is the second petition filed under Section 528 BNSS for setting aside of order dated 19.02.2025 (Annexure P-2) passed by the Court of learned Additional Sessions Judge, Amritsar in an appeal CRA No.52 of 2025 titled as '*Nawal Kishor Khurana and another vs. Sunny Thukral*' filed against the judgment dated 31.01.2025 passed by learned Judicial Magistrate Ist Class, Amritsar in NACT-6785 of 2018, whereby, the sentence of the petitioner was suspended conditionally by imposing a condition to deposit 20% of the cheque amount as compensation within 60 days. The first petition was withdrawn on 28.03.2025 with liberty to file a fresh petition with better particulars.

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 with the submissions that the petitioners are his relatives and were on visiting terms with him. Due to which, they availed a friendly loan of Rs.2,40,000/- from him. In order to discharge their legal liability, they



issued a cheque bearing No.296566 dated 14.11.2018 for Rs.2,40,000/- drawn on State Bank of India, Branch Lohgarh Gate, Amritsar in favour of the complainant. When the complainant presented the said cheque for its encashment, the same was dishonoured with remarks "Funds Insufficient". Thereafter, the complainant got issued legal notice dated 20.11.2018 to the petitioners/accused, but they failed to pay the aforementioned amount. Hence, this complaint.

3. Vide judgment and order dated 31.01.2025 passed by learned Judicial Magistrate Ist Class, Amritsar, the petitioners were convicted and sentenced to undergo simple imprisonment for a period of 01 year each for commission of offence punishable under Section 138 of Negotiable Instruments Act and were further directed to pay compensation jointly to the tune of cheque amount i.e. Rs.2,40,000/- to the complainant under Section 357(3) Cr.P.C., in default of payment of fine, they were further directed to undergo simple imprisonment for 01 month each and it was also directed that fine, if any already paid to the complainant, be set off from the amount of compensation. Thereafter, the petitioners preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Amritsar. The learned Appellate Court vide order dated 19.02.2025, suspended the sentence of the petitioners subject to depositing 20% of the compensation amount within 60 days of passing of the order.

4. Learned counsel for the petitioners *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 compensation 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 petitioners 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 19.02.2025, whereby, the condition of depositing 20% of compensation amount has been imposed for granting suspension of sentence upon the petitioners is hereby set aside. The learned lower Appellate Court is directed to re-examine the case after granting



an opportunity to the petitioners 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.

April 07, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |