



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-45830-2025
Date of decision: 27.08.2025

DINESH KUMARPetitioner

VERSUS

KASHMIRI LALRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Suresh Kumar Kaushik, Advocate for
Mr. Ajay Chaudhary, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

Prayer in the present petition under Section 482 of the Cr.P.C., is for quashing the order dated 15.04.2025 passed in the Criminal Appeal filed by the petitioner bearing CRA-166 of 2025 titled as “*Dinesh Kumar versus Kashmiri Lal*” arising out of the judgment dated 12.03.2025 in case No. N Act/394/2020 to the extent whereby the Appellate Court ordered the petitioner to make a pre-deposit of 20% of the total cheque/compensation amount for suspension of the sentence.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner-appellant is an accused in the complaint filed under Section 138 of the Negotiable Instruments Act titled as “Kashmiri Lal versus

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Dinesh Kumar” on the ground that the petitioner had availed a friendly loan of Rs. 3,70,000/- from the respondent in June, 2019 on a promise to pay back the same by December, 2019. A Cheque bearing No. 120499 dated 20.12.2019 for the aforesaid amount was alleged to have been issued towards full and final settlement of the account; however, the said cheque on presentation was dishonoured with remarks “Fund Insufficient”, vide Memo dated 30.12.2019. On failure to pay back the amount, the aforesaid complaint was filed before the Judicial Magistrate, 1st Class, Hisar, wherein vide judgment dated 12.03.2025, the petitioner was held guilty and was sentenced to undergo simple imprisonment for a period of one year. The trial Court also directed the petitioner to deposit double the cheque amount, i.e. Rs. 7,40,000/-, towards compensation within one month of the passing of the judgment.

3. Aggrieved thereof, the petitioner preferred an appeal before the Sessions Judge, Hisar. Along with the appeal, an application for suspension of sentence was also filed. The said application was allowed by the Appellate Court and the sentence was suspended vide order dated 15.04.2025; however, a condition of making a pre-deposit of 20% of the total cheque compensation amount was imposed, which is stated to be illegal. Hence, the petitioner moved an application before the Appellate Court for setting aside the condition of making a pre-deposit of 20% amount. Vide the impugned order, the said application has been dismissed. Hence, the present petition.



4. Learned Counsel has vehemently argued that the Appellate Court dismissed the application without appreciating the judgment of the Hon'ble Supreme Court in Criminal Appeal No. 2741 of 2023 titled as ***“Jamboo Bhandari versus M.P. State Industrial Development Corporation Ltd. and others”*** wherein it was specifically held that the pre-deposit of 20% amount is not an absolute rule which does not accommodate any exception and that the Court may, for reasons recorded, grant an exemption from making a such a pre-deposit. He relies on paragraphs No. 6, 7, 8, 9, and 10, which are extracted below:

“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.*

10. *In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.”*

5. No other argument has been raised.

6. I have heard learned Counsel appearing on behalf of the petitioner and have gone through the documents appended along with the present petition as well as the judgment of the Hon'ble Supreme Court in the matter of ***Jamboo Bhandari (supra)***.

7. It is evident from perusal of the order whereby the sentence of the petitioner was suspended, that an undertaking of the petitioner was



recorded that he shall make a pre-deposit of 20% of the total compensation amount. The operative part of the same reads thus: -

**ISSUE OF PAYMENT OF 20% OF
COMPENSATION AMOUNT:**

Appellant-accused suffered a statement that he is ready to pay the 20% of total compensation amount awarded by learned trial court, in the Court on the next date of hearing and if he fails to pay the amount, he will have no objection if suspension of my sentence is revoked and he is made to undergo the sentence imposed by learned Trial Court.

8. Undisputedly, the petitioner herein moved an application for waiver of the aforesaid condition. The said application has been appended by the petitioner as Annexure P-2. It is evident from perusal of the same that the petitioner has nowhere stated in the aforesaid application that the undertaking recorded by him was incorrectly recorded by the Appellate Court at the time of suspension of sentence. Instead, the reasons assigned by him for seeking a waiver are as under: -

“3. That in hence, by way of this application, the appellant-accused hereby request to seek waiver of 20% of the compensation amount being a case of exceptional category, inter-alia, on the following grounds:-

a. That appellant-accused has very weak and infirm financial condition and does not have money even to pay 20% of the compensation amount.



b. That in addition to this, the appellant-accused has been put to financial deprivation further by the untoward litigation launched by the respondent. This has burdened the appellant-accused to bear more expenses and after spending all what he had, on the litigations, the appellant is now running out of money.

c. That the appellant-accused is the sole bread earner of his family survived by his aged parents, his wife and one school going child.

d. That the petitioner is suffering from several health issues and psychiatric disease and the aged parents of the petitioner are suffering from long ailments.

4. That the above stated facts and circumstances are more than clear enough to prove that the appellant-accused does not have sufficient means to pay even the 20% of the compensation amount and case in hand is squarely covered under the law laid down by the Hon'ble Supreme Court of India and the Hon'ble High Court. Hence, this application.”

9. The said aspects were duly considered by the Appellate Court and it was noticed that no evidence was led by the petitioner to substantiate any of the said circumstances and in fact, the daily general obligations of any household person had been cited as a reason for making a non-deposit of the amount despite a specific undertaking given in the Court. In the absence of any exceptional circumstance or reason being given by the petitioner under which he could have been incapacitated from making a pre-deposit,



the application was thus dismissed. The operative part of the said order reads thus: -

“In the considered view of this Court, the application lacks merit. The claim of appellant is generic in nature. The application is not supported by any document to show that the appellant is financially deprived. There is no medical record to satisfy this Court that he is suffering from any illness and his parents are completely dependent upon him. There is no material on the record that he is so poor that his children are studying in a school which provides education either free of cost or for a paltry sum.

The authorities relied upon by the appellant are to the effect that the mandate under Section 148 of the Act is not mandatory and it is merely directory. One authority is to the effect that Section 389 Cr.P.C. works independently of Section 148 of the Act. Firstly, the order has already been passed by the Court on 15.04.2025 and suspension of sentence of the appellant was allowed under Section 389 Cr.P.C. when the appellant suffered his statement that he will pay 20% of the compensation amount awarded by learned Trial Court and on the basis of this undertaking, the sentence was suspended. For a period of four months, the appellant has been avoiding payment though the period to make such payment under the order dated 15.04.2025 as well as under Section 148 is 60 days extendable by a further period of 30 days if sufficient cause is shown. The application was filed for this purpose on 11.07.2025 i.e. after a lapse of 60 days. The moment an order is passed by the Court exercising jurisdiction under Section 148 of the Act, the nature of mandate becomes irrelevant. If the mandate is directory, it lies in



the discretion. of the Court whether to impose 20% of the compensation amount or not and this discretion has already been exercised on the basis of undertaking of the appellant. Thus, the authorities relied upon in this case are not beneficial to the appellant.

If such waiver is allowed as a matter of course on the basis of generic pleas, the mandate under Section 148 of the Act will be otiose and the purpose to introduce this provision by the Parliament will be defeated. Moreover, the complainant who becomes a kind of decree holder as far as compensation is concerned after proving his case before the Trial Court resulting into conviction of the appellant will have to suffer despite statutory protection. The exceptional circumstances mentioned in the authority are distinct from the general circumstances mentioned by the appellant i.e. maintenance of old aged parents and minor children and financial difficulty. If considering the version of appellant opportunity is granted to both the parties, a new trial will start on the point of proof or disproof of the claim of the appellant which can never be the purpose of Section 148 of the Act. When the statutory right of the appellant to file appeal and to pray for suspension of sentence was in question, no such plea was taken. When the appellant contested the complaint, the plea was taken that he had invested money in a company named 'Dev Bhumi'. The plea of the complainant that the accused borrowed ₹3,70,000/- was accepted by the Trial Court as legally enforceable debt and therefore, the appellant was held guilty. Thus, every accused under Section 138 of the Act remains under some legal liability and the reason for such liability is financial difficulty. If such financial difficulty of an accused is accepted as a



ground to grant such relief, every accused under the Act shall claim the same relief and there will be no meaning to Section 148 of the Act. Thus, none of the grounds taken by the appellant can be accepted as exceptional so as to grant the relief to him in terms of the authorities of Hon'ble High Court relied upon in this case.

In view of the above discussion, the application stands dismissed. The only relief can be granted to the appellant is that on the next date of hearing if the payment is not made in terms of the order dated 15.04.2025, he will argue on the merit of the case on 18.08.2025.

10. Even during the course of hearing, this Court specifically put a query to the counsel for the petitioner as to what were the exceptional circumstances on the basis whereof it can be held that the condition of pre-deposit to the extent of 20% is onerous or excessively harsh and untenable, Counsel for the petitioner has failed to refer to any evidence that may substantiate his case or demolish the findings so recorded by the Appellate Court in the impugned order.

11. While this Court gives due regard to the judgment of the Hon'ble Supreme Court in the matter of **Jambo Bhandari (supra)** and does not dispute the proposition of law laid down thereunder, however, the said judgment would not be applicable to the facts of the present case. Even though there is no absolute mandate that there has to be a pre-deposit, however, the facts of the present case duly substantiate that the statement to the effect that a 20% pre-deposit shall be made by the petitioner was a voluntary statement made by him before the Court at the time of seeking suspension of sentence. The aforesaid undertaking was never disputed or



denied by the petitioner, even at the stage of moving an application seeking a waiver. Besides, no exceptional circumstance as would lay down any foundation for reviewing the aforesaid condition has also been laid by the petitioner. There is no obligation cast upon the Court to assume a hardship. The said aspect is required to be established by the person claiming any such benefit and to be supported by unimpeachable evidence that there are exceptional circumstances which would prevent a person from making a pre-deposit to that extent, and that instead, any other amount be ordered to be deposited in the Court, that pre-deposit may be waived off. No such circumstances or evidence have been shown by the petitioner even before this Court.

12. Consequently, I find that there is no illegality or infirmity in the order passed by the Appellate Court. The instant petition is accordingly ***dismissed.***

AUGUST 27, 2025

Vishal Sharma

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No