



CRM-M-59885-2024

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

CRM-M-59885-2024

Date of Decision: 29.11.2024

Jatinder Kumar Sharma

..... Petitioner

Versus

Om Diary

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mandeep K. Dhot, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing/modification of the impugned order dated 07.06.2024 (Annexure P-2), passed by learned Additional Sessions Judge, Panchkula, in Criminal Appeal i.e. CRA-85/2024 dated 06.06.2024, whereby the sentence of the petitioner is suspended with the condition that he shall deposit 20% of the compensation amount as awarded by learned trial Court, which was filed against the judgment dated 13.03.2024, passed in NACT 322 of 2018.

2. Learned counsel for the petitioner has stated that petitioner was prosecuted in a complaint under Section 138 of the Act and he was convicted by learned Judicial Magistrate Ist Class, Panchkula under Section 138 of the Negotiable Instrument Act, 1881, vide judgment dated 21.03.2024 and sentenced to undergo simple imprisonment for one year and was ordered to pay compensation of Rs.7,00,000/- . It is further submitted that against the order dated 21.03.2024, the petitioner filed an appeal before the Court of learned Additional Sessions Judge at Panchkula and learned Appellate Court vide its impugned order dated 07.06.2024 (Annexure P-2) suspended the sentence of petitioner subject to deposit 20% of the compensation amount with aid of Section 148 of the NI Act. However, due



to financial constraints, the petitioner failed to comply with the order dated 07.06.2024. He submits that even otherwise, the impugned order dated 07.06.2024 passed by the learned Appellate Court is in violation of the law settled by Hon'ble Supreme Court in **Jamboo Bhandari vs M.P.State Industrial Development Corporation Ltd. and others**, 2024(1) SCC (Cri) 90 wherein it has been held that 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 NI 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, which is missing in the present case. It is submitted that learned trial Court has not appreciated the case and circumstances of the petitioner as per mandate of Hon'ble Supreme Court in **Jamboo Bhandari's** case (supra).

3. Heard.
4. After hearing learned counsel for the petitioner and perusing the record, it is apparent that sentence of the petitioner was suspended by learned Appellate Court subject to deposit of 20% of the compensation amount awarded by learned trial Court. However, the petitioner did not comply with the same.
5. In view of the aforesaid facts, and the judicial precedent settled by Hon'ble Apex Court in **Jamboo Bhandari's** case (supra), without commenting anything on the merits of the case, the present petition is



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disposed of. Petitioner is relegated to approach the learned Appellate Court concerned and file an appropriate application before it, which would be decided, by taking into consideration the law laid down by the Hon'ble Apex Court in **Jamboo Bhandari's** case (supra) in this regard within one month from the date of filing of the application. The directions given in the order dated 07.06.2024 by learned Appellate Court to the extent of depositing 20% of compensation, are set aside and the petitioner continues to remain on bail as per order dated 07.06.2024 of learned Appellate Court till the above-said application is disposed of by it.

(RAJESH BHARDWAJ)

JUDGE

29.11.2024

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Whether Speaking/Reasoned :

Yes/No

Whether Reportable :

Yes/No