



2024:UHC:9678

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Criminal Miscellaneous Application No. 989 of 2024

Sh. Navneet Agarwal

...Applicant

Vs.

District Cooperative Bank Ltd.

...Respondent

Presence:

1. Mrs. Meena Bisht and Mrs. Mamta Joshi, learned counsel for the appellant.
2. Mr. Akshay Latwal, learned Brief Holder for the State.
3. Mr. Mohd. Azim, learned counsel for the respondent.

Hon'ble Rakesh Thapliyal, J. (Oral)

By the instant application preferred by the applicant under Section 528 of BNSS, 2023, the applicant is challenging the order passed by the learned Session Judge, Dehradun dated 03.09.2024 in Criminal Appeal No. 268 of 2024 'Sh. Navneet Agarwal vs. District Cooperative Bank', which was preferred against the judgment and order passed by the Trial Court dated 05.08.2024 in Complaint Case No. 1746 of 2015, whereby, the appellant has been convicted under Section 138 of the Negotiable Instruments Act with the sentence of one year simple imprisonment and fine of Rs. 11,25,000/-.

2. By the order under challenge dated 03.09.2024, the learned Session Judge while admitting the appeal directed the appellant to deposit 20% of the total amount of compensation within 60 days as per the mandate of Section 148 of Negotiable Instruments Act.

3. Being aggrieved with the direction to deposit 20% of total amount of compensation as per mandate of Section 148 of



the Negotiable Instruments Act, the present application has been preferred by the applicant under Section 528 of BNSS, 2023.

4. Learned counsel for the applicant submits that the direction as issued by the learned Sessions Judge by the order under challenge for depositing 20% of the amount of compensation is, in fact, against the letter of spirit of Section 138 of the Negotiable Instruments Act.

5. Learned counsel for the applicant submits that direction of depositing the amount is, in fact, directory and not mandatory and this aspect has not been looked into by the learned Sessions Judge.

6. Section 148 of the Negotiable Instruments Act is being extracted herein below-

148. Power of Appellate Court to order payment pending appeal against conviction. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court: Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A. (2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant. (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal: Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.”

Sub-section 1 of Section 148 stipulates that in an appeal filed by the drawer against conviction under Section 138, of the N.I. Act, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.



7. Learned counsel for the applicant in support of her argument placed reliance in the judgment rendered by the Hon'ble Supreme Court in the case of Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd., (2023) 10 SCC 446.

8. In this judgment, the Hon'ble Apex Court gives the reference of the earlier judgment in the case of Surender Singh Deswal, (2019) 11 SCC 341. Paragraph 8 of the decision in this case has also been reproduced in paragraph 5 of the judgment passed in the case of Jamboo Bhandari. Learned counsel for the applicant placed reliance to paragraph nos. 5, 6 and 7 of the judgment, which are being reproduced hereinbelow:-

“5. Para 8 of the decision of this Court in Surinder Singh Deswal reads thus: (SCC p. 350)

“8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 NI Act as amended, the appellate court “may” order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court and the word used is not “shall” and therefore the discretion is vested with the first appellate court to direct the appellant-accused to deposit such sum, and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 NI Act as amended is concerned, considering the amended Section 148 NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 NI Act, though it is true that in the amended Section 148 NI Act, the word used is “may”, it is generally to be construed as a “rule” or “shall” and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 NI Act confers power upon the appellate court to pass an order pending appeal to direct the appellant-accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant-accused under Section 389CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the



order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 NI Act, but also Section 138 NI Act. The Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 NI Act and also Section 138 NI Act.”

(emphasis supplied)

6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the 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 the appellate court considers the prayer under Section 389CrPC of an accused who has been convicted for offence under Section 138 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.”

9. After taking into consideration the submissions as advanced by the learned counsel for the applicant and further after gone through with the judgment rendered by the Hon’ble Apex Court in that case of Jamboo Bhandari (*supra*), this Court is of the view that while issuing the direction to deposit 20% of the amount of compensation, the Appellate Court has to examine whether it is mandatory or directory, however, after perusal of the



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order under challenge, it appears that this aspect has not been dealt with.

10. Accordingly, the instant application is disposed of finally by remitting the matter back to the learned Sessions Judge to reconsider the application of the applicant for seeking waiver of pre-deposit of 20% of amount of compensation as per mandate of Section 148 of Negotiable Instruments Act in the light of the judgment rendered by the Hon'ble Apex Court in the case of Jamboo Bhandari (*supra*) within three weeks from the date of production of certified copy of this order till then the direction issued to deposit 20% of the amount of compensation shall remain stayed.

11. Subject to the observation, the directions as made above, the present C-528 is disposed of finally.

(Rakesh Thapliyal, J.)
18.12.2024

Ujjwal