

**Court No. - 73**

**Case :-** APPLICATION U/S 482 No. - 5948 of 2025

**Applicant :-** Dileep Kumar Mishra

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Sharad Kumar

**Counsel for Opposite Party :-** G.A., Vinod Pandey

**Hon'ble Vikas Budhwar, J.**

1. Heard Sri Sharad Kumar, learned counsel for the applicant as well as Sri S.K. Singh, learned AGA for the State and Sri Vinod Pandey, learned counsel for opposite party no.2

2. On the joint statement has been made by learned counsel for the parties that they do not propose to file any affidavit and the application be decided on the basis of documents available on record. With the consent of the parties, the application is being decided as the fresh stage.

3. This is an application U/s 482 Cr.P.C. filed for quashing the judgment and order dated 04.01.2025 passed by Sessions Judge, Varanasi for deposit of 20 per cent of the amount of the penal amount of Rs. 10,65,000/- imposed in Criminal Appeal No. 03 of 2025 (Dileep Kumar Mishra vs. State of U.P. and another) under Section 138 of N.I. Act P.S. Rohaniya, District Varanasi.

4. Learned counsel for the applicant has submitted that with relation to dishonouring of a cheque of an amount of Rs. 8 lac, a complaint was lodged by the opposite party no.2 against the applicant in which the applicant was convicted on 11.12.2024 by the court of Additional Court, Varanasi. Against the same the applicant preferred a criminal appeal no. 3 of 2025 before the court of Sessions Judge, Varanasi under section 415 (3) of BNSS for stay of conviction and recovery. On the said application on 04.01.2025 the court below directed the applicant to deposit an amount of Rs. 10,65,000/- in exercise of powers as conferred under section 148 of N.I. Act while granting the bail to the applicant with two sureties or a bond of an amount of Rs. 25,000/-.

5. Questioning the order dated 04.01.2025 passed by the Sessions Court, Varanasi in appeal no. 3 of 2025 directing the applicant to deposit 20 percent of an amount of Rs. 10,65,000/- the applicant

has filed the present application.

6. Learned counsel for the applicant has submitted that though section 148 of N.I. Act provides for grant of compensation at the appellate stage in favour of the payee/ complainant by the accused to the minimum of 20 per cent of the compensation amount of the cheque which is stated to have been dishonoured and the subject matter of the trial against which the appeal had been preferred but it is submitted that as mandated by the Hon'ble Apex Court in the case of ***Jumboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and Ors, 2024 1 SCC (Crl) 90***, the Apex Court is to be considered whether it is to be an exceptional case which warrants granted of suspension of sentence without condition of deposit of 20 per cent of the fine/ compensation of the amount or not. Reliance has further been placed upon the decision of the Hon'ble Apex Court in the case of ***Muskan Interprises and another vs. State of Punjab 2024 0 INSC 1046***. It is submitted that the appellate order dated 04.01.2025 is completely lacking the said exercise which is not as per the mandate of the law as laid down in both the decisions. It is further submitted that order in so far it imposes a compensation of 20 per cent of total amount of Rs. 10,65,000/- be set aside and the matter be remitted back to the court below to pass a fresh order..

7. Learned counsel for opposite party no.2 submitted that there was no such grounds taken in the memo of appeal of the application for staying of the conviction on recovery. However he could not dispute the fact that the Hon'ble Apex Court in the case of Jumboo Bhandari (Supra) had dispelled the argument of the complainant side that the said ground is to be taken however it had cast the obligation upon the court to consider the said aspect. He however submits that as per the instructions received from the client, the order dated 04.01.2025 in so far as imposition of compensation to the 20 per cent of the total amount of Rs. 10,65,000/- be set aside and the matter be remitted back to the appellate court to pass fresh order.

8. Learned AGA has adopted the arguments made by learned counsel for opposite party no.2.

9. Considering the submission so made across the bar and in view of the law laid by the Hon'ble Apex Court while exercising the powers under Section 148 of N.I. Act in the case on Jumboo (***Supra***) in paragraph 7 to 10 as observed as under:

*"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 389 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."*

10. The said law has been reiterated in the case of Muskan Interprises (***Supra***).

11. Looking into the present facts and circumstances of the case and also the stand taken by learned counsel for opposite party no.2, the present application stands disposed of in the following terms:

a) The order dated 04.01.2025 passed in criminal appeal no. 3 of 2025 (Dileep Kumar Mishra vs. State of U.P.) by the court of In-charge Sessions Judge, Varanasi in so far as it grants 20 per cent of the compensation of the total amount of Rs. 10,65,000/- is set aside.

b) The matter stands remitted back to the court below to pass a fresh order in accordance with law.

c) The applicant as well as the opposite party no.2 shall submit a certified copy of the order before the court below by 23.05.2025.

d) The court below shall proceed to decide the said aspect strictly in accordance with law laid down in the case of Jumboo Bhandari (***Supra***) and in the case of Muskan Interprises (***Supra***).

12. Since the counsel for the applicant has made a statement at bar

as per the instructions received from his client that no adjournment would be taken thus the court is expected to decide the proceedings with most expedition.

13. In case under special circumstances, the adjournment is sought by the applicant then the same should not be beyond three days at a stretch and that should not be more than two adjournments. The court below shall decide the said application strictly in accordance with law.

14. The passing of the order may not construed to an expression that this Court has adjudicated the case on the merits of the matter. It is open for the court below to pass a fresh order strictly in accordance with law.

**Order Date :- 9.5.2025**

C. MANI

**(Vikas Budhwar,J.)**