

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 24091 of 2025

Applicant :- Vipin Chandra Gupta

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

Counsel for Applicant :- Balbeer Singh, Sanjay Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar, J.

1. Vakalatnama has been filed by Shri Vikram Yadav (A/V 0887/2013) and Shri P.K. Upadhyay (A/P 0056/2012) on behalf of counsel for opposite party no. 2.

2. Heard learned counsel for the applicant and learned State Law Officer for the State as well as Shri Vikram Yadav and Shri P.K. Upadhyay, counsel for opposite party no. 2.

3. A statement has been made by counsel for the applicant that he does not propose to file any rejoinder affidavit, thus, with the consent of the parties, the application is being decided at the fresh stage.

4. This application under Section 528 BNSS has been filed by the applicant to quash the impugned order dated 17.05.2025 passed by Learned Additional Sessions Judge, Court No. 14, Prayagraj in Criminal Appeal No. 126 of 2023, (Vipin Chandra Gupta Vs. State of U.P. & Another) arises out of the judgment of conviction dated 31.05.2023 passed by the Learned Presiding Officer, Additional Court, N.I. Act, Court No. 2, Prayagraj in Complaint Case No. 2465 of 2015, (Dinesh Kumar vs. Vipin Chandra Gupta) under Section 138 of the Negotiable Instruments Act, Police Station Kotwali, Allahabad.

5. Learned counsel for the applicant submits that a complaint stood lodged by the opposite party no. 2 under Section 138 of the N.I. Act with relation to the dishonour of the cheque which resulted into an order dated 31.05.2023 passed by the Additional Sessions Judge, N.I. Act, Court No. 2, Allahabad in Complaint Case No. 2465 of 2015 convicting and sentencing the applicant herein for simple imprisonment and fine of Rs. 4 lakhs.

6. Assailing the said order, the applicant had preferred an appeal being Appeal No. 126 of 2023 along with an application for stay of the conviction and sentence and also recovery of the amount and the said application, an order came to be passed in exercise of the power under Section 148 of the N.I. Act staying the conviction and sentence and the recovery of the amount of the fine subject to payment of 20% of the same to the tune of Rs. 80,000/-.

7. Questioning the said order, directing the applicant to deposit 20% of the fine as determined by the trial court under Section 148 of the N.I. Act, the application has been filed.

8. Learned counsel for the applicant has submitted that the order passed by the Additional Sessions Judge, Court No. 14, Prayagraj while exercising the powers under Section 148 of the N.I. Act suffers from patent illegality, particularly, when though the power vests with the appellate court in the proceedings under Section 148 of the N.I. Act to stay the conviction and recovery post, by deposit of 20% of the amount determined by the trial court but the same needs consideration in view of the fact as to whether the case of the applicant/ accused falls under exceptional category or not. He submits that as a matter of rule on mere asking, the order directing 20% of the fine as determined by the trial court has been passed which is not as per the mandate of the Hon'ble Apex Court in

Jamboo Bhandari v. M.P. State Industrial development; 2023 (10) SCC 466 and ***Muskan Enterprises v. State of Punjab; 2024 0 Supreme(SC) 1331***. He thus submits that the judgment and order dated 17.05.2025 passed by the appellate court be set aside insofar as issued a blanket direction of 20% of the fine.

9. Learned AGA as well as counsel appearing for the opposite party No. 2 on instructions submitted that though the cheques stood drawn and applicant stood convicted but as per the mandate in ***Jamboo Bhandari (supra)*** and ***Muskan Enterprises (supra)*** has not been addressed. They submit that the order insofar as directs 20% of the fine as determined by the trial court is set aside and the matter be remitted back to Court below to pass fresh orders.

10. I have heard learned counsel for the parties and gone through the records carefully.

11. Apparently, post lodging of the complaint under Section 138 of the N.I. Act, the applicant came to be convicted by the trial court for simple imprisonment and six months and payment of Rs. 4 lakhs as fine against which the applicant has preferred the appeal wherein the bail was accorded and thereafter an order came to be passed on 17.05.2025, directing for deposit of 20% of the fine as determined by the trial court.

12. Section 148 of the N.I. Act empowers the appellate court to order, payment pending appeal against conviction which shall be minimum of 20% of the fine of rupees of the compensation awarded by the trial court which shall be in addition to the interim compensation granted under Section 143A of the N.I. Act. However, in ***Jamboo Bhandari (supra)***, the Hon'ble Apex Court

held as under:

"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."

13. Though the Court has referred the judgement in the case of in **Jamboo Bhandari (supra)** has sought to 20% of the total fine in favour of the complainant but the consideration which weighed with the appellate court was that the appeal is pending since two years and it appears that the appellant does not want to get the same decided.

14. In the opinion of the Court, the considerations which ought to have been given weightage as per the mandate in **Jamboo Bhandari (supra)** and **Muskan Enterprises (supra)** has not been

adhered to, in order to determine as to whether the case of the applicant falls under exceptional category or not. Since the said exercise is lacking, thus, the present application is being decided in the following terms:

(a). The order dated 17.05.2025 passed by Learned Additional Sessions Judge, Court No. 14, Prayagraj in Criminal Appeal No. 126 of 2023, (Vipin Chandra Gupta Vs. State of U.P. & Another) insofar as it directs to deposit 20% of the fine of amount as determined by the trial court is set aside.

(b). The matter stands remitted back to pass fresh order strictly in accordance with law.

15. Learned counsel for the applicant as well as counsel appearing for the opposite party No.2 have made a joint statement that they are in receipt of instructions, according to which, the party shall not take any unnecessary adjournments, thus, this Court is directed to the court below to pass fresh orders strictly in accordance with law, in case, any adjournment is being granted for any eventuality then the same should be on the genuine reasons and not more than five days at a stretch.

16. It goes without saying that the appeal be also decided as per the mandate of the Act.

17. For facilitating early disposal, the party shall furnish the certified copy of the order before the court below by 14.08.2025 and the court below shall proceed to decide the said proceeding with most expedition.

18. Needless to point out that the Court has not adjudicated upon the merits of the case.

19. Accordingly, the application stands **disposed of**.

Order Date :- 31.7.2025

A. Prajapati