

Reserved on : 29.08.2026

Pronounced on : 25.09.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 11027 OF 2026

BETWEEN:

1. M/S.NANDHINI BUILDERS PVT. LTD.,
OFFICE AT NO.114/2, LALBAGH PORT ROAD,
MINERVA CIRCLE,
BENGALURU - 560 002.
REPRESENTED BY ITS DIRECTOR
MR. RUPESH ANAND.
2. MR.RUPESH ANAND,
S/O. LATE ANAND,
AGED ABOUT 50 YEARS,
OFFICE AT NO.114/2,
LALBAGH PORT ROAD,
MINERVA CIRCLE,
BENGALURU - 560 002.

...PETITIONERS

(BY SRI ANGAD KAMATH, ADVOCATE)

AND:

SRI S.CHINNA SWAMY
S/O LATE SALLAPURIYAPPA,
AGED ABOUT 62 YEARS,
RESIDING AT SAMPIGE NAGAR,
KAMMASANDRA,
ELECTRONIC CITY POST,
BENGALURU - 560 100.

...RESPONDENT

THIS CRL.P IS FILED U/S 482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 25.03.2026 IN CRL.A.NO.5003/2026 PASSED BY THE III ADDL.DISTRICT AND SESSIONS JUDGE, ANEKAL ON THE APPLICATION FILED UNDER SEC.389(1) OF CR.P.C.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.08.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are before the Court calling in question an order dated 25-03-2026 passed in Criminal Appeal No.5003 of 2026 under Section 389(1) of the CrPC.

2. Heard Sri Angad Kamath, learned counsel appearing for petitioners. The respondent though served remains unrepresented.

3. Facts in brief, germane, are as follows:

3.1. The petitioners are accused Nos.1 and 2, the respondent the complainant. The respondent is the absolute owner of certain lands bearing several survey numbers. The respondent sells several of the properties to the 2nd petitioner's sister for a consideration of ₹ 12,27,00,000/- in terms of three sale deeds, out of which, the sister of the 2nd petitioner is said to have paid the total consideration of ₹ 3 crores in place of ₹ 12.27 lakhs and entered into a Memorandum of Understanding ('MOU') dated 08-07-2014 with petitioner No.2, one M.Muniraju and one M.Ashok for payment of the balance sale consideration to the respondent.

3.2. In furtherance of the said MOU, another MOU dated 15-02-2016 is entered into between the same parties, agreeing to pay interest and penalty at the rate of 2.5% for the delay in payment of balance consideration and to that effect. 4 post-dated cheques all drawn on Tumkur Grain Merchants Co-operative Bank

are issued in favour of the complainant. Subsequently, when the cheques were presented for realization, it was endorsed by the Bank that the account is already closed. This leads the complainant to issue a statutory demand notice under the Negotiable Instruments Act, 1881 ('NI Act' for short) and finally reaches the doors of the learned Magistrate, invoking Section 200 of the Cr.P.C. for the offence punishable under Section 138 of the NI Act.

3.3. The concerned Court, after trial, convicts the accused for a fine of ₹ 2,25,00,000/- in terms of the judgment dated 24-02-2026. The petitioners, aggrieved by the said order, prefer an appeal in Criminal Appeal No.5003 of 2026 challenging the judgment and order of conviction and sentence invoking Section 374(3)(a) of the Cr.P.C. and also file an application invoking Section 389(1) of the Cr.P.C. seeking to suspend the sentence before the Court of Session. The Criminal Appeal along with the application was taken up for its consideration by the Court of Session and while considering the application under Section 389(1) of the Cr.P.C., the concerned Court suspends the sentence subject to the condition that the petitioners would deposit 20% of the fine

amount as prescribed under Section 148 of the NI Act. The petitioners are said to have deposited ₹ 5,00,000/- in compliance with the order of the trial Court and being unable to pay the said deposit are before this Court calling in question the said order contending that it is contrary to the settled principles as laid down by the Apex Court in **JAMBOO BHANDARI v. MADHYA PRADESH STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED** reported in **(2023) 10 SCC 446**.

4. The learned counsel appearing for the petitioners Sri Angad Kamath would vehemently contend that the Court cannot, without passing a reasoned order, impose a condition that the suspension of sentence can happen only on payment of 20% of the fine amount. This runs counter to what the Apex Court has held in **JAMBOO BHANDARI** *supra*. He would further submit that the appeal is preferred under Section 374(3)(a) of the Cr.P.C. and the suspension of sentence is sought under Section 389(1) of the Cr.P.C. The two cannot be taken up together and a common order be passed directing payment of 20% of the fine amount owing to the mandate of another statute, i.e. the NI Act, in terms of Section

148 of the NI Act. He would seek that the order be obliterated and the matter be directed to be reconsidered by the concerned Court.

5. I have given my anxious consideration to the submission made by the learned counsel and have perused the material on record. In furtherance whereof, the issue that falls for my consideration is:

“Whether the concerned Court was well within its power to direct deposit of 20% of the amount as obtaining under Section 148 of the NI Act?”

6. The issue need not detain this Court for long or delve deep into the matter. The submissions that are projected now were also projected before the Apex Court in the case of **SURINDER SINGH DESWAL ALIAS COLONEL S.S. DESWAL v. VIRENDER GANDHI¹**, wherein the Apex Court considering the purport of Section 148 of the NI Act has held as follows:

“....

¹ (2019) 11 SCC 341

6.1. The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellant-original accused who have been convicted for the offence under Section 138 of the NI Act to deposit 25% of the amount of compensation/fine imposed by the learned trial court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 CrPC, considering Section 148 of the NI Act as amended?

6.2. While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the NI Act, as amended by way of Amendment Act 20 of 2018 and Section 148 of the NI Act as amended, are required to be referred to and considered, which read as under:

"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely—

(i) to insert a new Section 143-A in the said Act to provide that the court trying an offence under Section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new Section 148 in the said Act so as to provide that 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.

4. The Bill seeks to achieve the above objectives.”

* * *

“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 143-A.

(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."

7. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the NI Act were lodged/filed before Amendment Act 20 of 2018 by which Section 148 of the NI Act came to be amended and therefore amended Section 148 of the NI Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the NI Act were preferred, Amendment Act 20 of 2018 amending Section 148 of the NI Act came into force w.e.f. 1-9-2018. Even, at the time when the appellants submitted application(s) under Section 389 CrPC to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the NI Act came into force and was brought on statute w.e.f. 1-9-2018. Therefore, considering the object and purpose of the amendment in Section 148 of the NI Act and while suspending the sentence in exercise of powers under Section 389 CrPC, when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the NI Act.

7.1. Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the NI Act was being frustrated,

Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, is conferred with the power to direct the convicted appellant-accused to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court. By the amendment in Section 148 of the NI Act, it cannot be said that any vested right of appeal of the appellant-accused has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the NI Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1-9-2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the NI Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in *Garikapati Veeraya* [*Garikapati Veeraya v. N. Subbiah Choudhry*, AIR 1957 SC 540] and *Videocon International Ltd.* [*Videocon International Ltd. v. SEBI*, (2015) 4 SCC 33], relied upon by the learned Senior Counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, **considering the Statement of Objects and Reasons of the amendment in Section 148 of the NI Act stated hereinabove, on purposive interpretation of Section 148 of the NI Act as amended, we are of the opinion that Section 148 of the NI Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the NI Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial court considering Section 148 of the NI Act, as amended.**

8. Now so far as the submission on behalf of the appellants that even considering the language used in

Section 148 of the 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 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the 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 of the 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 389 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the 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 of the NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the 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 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.

9. Now so far as the submission on behalf of the appellants, relying upon Section 357(2) CrPC that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in *Dilip S. Dahanukar* [*Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209] is concerned, the aforesaid has no substance. **The opening words of the amended Section 148 of the NI Act are that "notwithstanding anything contained in the Code of Criminal Procedure....". Therefore irrespective of the provisions of Section 357(2) CrPC, pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the NI Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial court."**

The Apex Court holds, considering the object and purpose of the amendment to Section 148 of the NI Act, that while suspending the sentence in exercise of power under Section 389 of the Cr.P.C., the appellate Court had therein directed deposit of 25% of the amount of compensation imposed by the trial Court. The Apex Court then goes on to hold that the amended Section 148 of the 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 an application filed by the accused under Section 389 CrPC to suspend the sentence. Therefore, the submission of the learned counsel for the petitioners, Sri Angad Kamath, that the concerned Court has no power to suspend the sentence making it a condition precedent under Section 389 of the Cr.P.C. in an application seeking suspension of sentence cannot be accepted. The Apex Court has clearly held that it can be on an application filed by the original complainant or the concerned Court can order in an application under Section 389 Cr.P.C. But the submission of the learned counsel to this effect would merit acceptance that there should be a separate application by the complainant seeking deposit of 20% or the Court should pass an order which bears application of mind to grant 20% of the amount while answering the application for suspension of sentence.

7. It would be relevant, in this regard, to refer to Sections 374 and 389 of the Cr.P.C. They read as follows:

"374. Appeals from convictions.—(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under Section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate,

may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB or Section 376-E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

....

389. Suspension of sentence pending the appeal; release of appellant on bail.—(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give

opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

- (i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
- (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

Section 148 of the NI Act reads as follows:

"148. Power of Appellate Court to order payment pending appeal against conviction.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 143-A.

(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."

It becomes apposite to quote the judgment of the Apex Court in the case of **JAMBOO BHANDARI** *supra*, wherein the Apex Court holds as follows:

"....

3. An appeal was preferred by the appellants before the Sessions Court. Relying upon Section 148 NI Act, the Sessions Court granted relief under Section 389 of the Code of Criminal Procedure, 1973 (for short "CrPC") subject to condition of the appellants depositing 20% of the amount of compensation. Vide the impugned judgment [*Jamboo Bhandari v. M.P. SIDC Ltd.*, 2022 SCC OnLine MP 5852] , [*Satish Ji Bhandari v. M.P. SIDC Ltd.*, 2022 SCC OnLine MP 5853] , the High Court has confirmed the order of the Sessions Court.

4. The High Court relied upon the decision of this Court in *Surinder Singh Deswal v. Virender Gandhi* [*Surinder Singh Deswal v. Virender Gandhi*, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765] . The High Court proceeded on the footing that, as this Court has interpreted the word "may" appearing in Section 148 as "shall", the relief of suspension of sentence under Section 389CrPC can be granted only by directing the accused to deposit minimum of 20% of the compensation/fine amount.

5. Para 8 of the decision of this Court in *Surinder Singh Deswal* [*Surinder Singh Deswal v. Virender Gandhi*, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765] 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.

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 389CrPC 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.

11. The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court.

12. In these circumstances, we set aside the impugned orders [*Jamboo Bhandari v. M.P. SIDC Ltd.*, 2022 SCC OnLine MP 5852] · [*Satish Ji Bhandari v. M.P. SIDC Ltd.*, 2022 SCC OnLine MP 5853] of the High Court and restore the revision petitions filed by the appellants before the High Court. We direct the parties to appear before the roster Bench of the High Court on 9-10-2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court, it will not be necessary for the High Court to issue a notice of the date fixed for hearing. **The High Court, after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the revision**

petitions in the light of what we have observed in this judgment. Till the disposal of the restored revision petitions, the interim order [*Jamboo Bhandari v. M.P. SIDC Ltd.*, 2023 SCC OnLine SC 1204] passed by this Court ordering suspension of sentence will continue to operate.”

(Emphasis supplied at each instance)

The Apex Court now holds that the appellate Court, if satisfied that 20% of the amount would be unjust or imposing such a condition would amount to deprivation of a right of an appeal of the appellant, can make an exception for the reasons specifically recorded. Therefore, discretion is vested by the interpretation of Section 148 of the NI Act in favour of the accused and a direction to the concerned Court, permitting it to exempt such 20% to be deposited for reasons recorded in writing.

8. In the teeth of the afore-quoted two judgments of the Apex Court and the mandate of the statute as noted hereinabove, the order of the concerned Court in Criminal Appeal No. 5003 of 2026 is required to be noticed. It reads as follows:

“Heard Learned Counsel for the Accused on Application Under Section 389 (1) of Code of Criminal Procedure and perused the Impugned Judgment. The Appellant has got arguable case on merit. Hence the Application is liable to allowed. Therefore, I proceed to pass the following : -

ORDER

The Application Under Section 389 (1) of Code of Criminal Procedure is allowed.

Consequently the Judgment of sentence passed by the 4th Addl. Civil Judge and JMFC, Anekal in C.C. No. 1947/2019, dated 24.02.2026 is hereby stayed till disposal of the Appeal subject to deposit of 20% of fine amount imposed by the Trial Court within next date of hearing.”

The order of the concerned Court is bereft of reasons as to why 20% amount is to be deposited as a condition precedent for suspension of sentence. The order flies foul of the observations of the Apex Court in the afore-quoted two judgments. Therefore, in that light, the order is rendered unsustainable and the unsustainability of it would necessarily lead to its obliteration with a direction to the concerned Court to pass a fresh order on an application filed by the petitioners seeking suspension of sentence.

9. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is **allowed**.

- (ii) Impugned order dated 25-03-2026 passed in Crl.A.No.5003 of 2026 passed by the III Additional District and Sessions Judge, Anekal stands quashed.
- (iii) The matter is remitted back to the hands of the concerned Court to pass necessary orders afresh on the application filed by the petitioners-accused seeking suspension of sentence. Till such time the concerned Court would pass an order, the sentence shall stand suspended.

Sd/-
(M.NAGAPRASANNA)
JUDGE

BKP