IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 1057/2022.

Ranbir Singh son of Shri Mehar Singh, Resident of Village Tajakpur, Tehsil Jagadhri, District Yamuna Nagar (Haryana) PC 135 001. ... **APPLICANT.**

VERSUS

Dr.Vidya Sagar son of late Babarasi Das Garg, resident of Flat No.23, Indrasagar Apartments, Civil Lines, Near Akashwani Square, Nagpur 440001. ... **NON-APPLICANT.**

Mr. C.F. Bhagwani, Advocate for the Applicant.
Mr. H.S. Chitale, Advocate for the Non-applicant.

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT ON : 12.09.2022.
JUDGMENT PRONOUNCED ON : 16.09.2022.

JUDGMENT :

Heard. Considering the controversy involved in the matter and by consent of the learned Counsel appearing for the parties, Criminal Application is taken up for final disposal at the stage of admission.

Admit.

2. The applicant who is an accused of Summary Criminal Case No.6787/2018, has invoked the inherent jurisdiction of this Court by challenging the order dated 26.04.2022 passed in Criminal Appeal No.76/2022, by which the Appellate Court has directed the applicant to deposit 20% of the compensation amount in terms of Section 148 of the Negotiable Instruments Act (hereinafter referred to as "the N.I.Act" for short).

3. The facts leading to the present application in nutshell are that, the non-applicant has filed a Criminal Complaint against the applicant alleging commission of offence punishable under Section 138 of the N.I.Act. The said complaint was numbered as S.C.C.

No.6787/2018. The parties led evidence and on full fledged trial the learned Magistrate held the applicant guilty for commission of offence punishable under Section 138 of the N.I.Act. The learned Magistrate by convicting the applicant has directed him to pay a sum of Rs.70 lakhs under Section 357[1] of the Code of Criminal Procedure by way of compensation. Feeling aggrieved by the said judgment and order of conviction, the applicant has preferred an appeal to the Court of Sessions which has been numbered as Criminal Appeal No.76/2022. The applicant has also applied for suspension of the execution of sentence in terms of Section 389[1] of the Code of Criminal Procedure. The learned Sessions Judge while suspending the sentence, directed the applicant to deposit 20% of the above referred sum.

4. The learned Counsel appearing for the applicant has challenged the impugned order on the ground that the Appellate Court erred in passing discretionary order of directing to pay partial compensation amount. It is submitted that the applicant has arguable case on merits in appeal, and thus, the Appellate Court ought to have considered the applicants defence on prima facie basis

while passing the impugned order.

5. It is argued that the disputed cheque was returned with an endorsement as "no such account", and therefore, the essential ingredients of Section 138 of the N.I.Act are missing. It is submitted that the non-applicant has admitted that the transaction was with his deceased brother and therefore, the complaint was not maintainable, since there was no liability towards the non-applicant. Moreover, it is argued that the non-applicant has not examined the Bank Officers to establish return of cheque for insufficiency of funds. According to the applicant, these vital aspects have not been considered, and therefore, the Appellate Court went wrong in exercising the discretion while passing the order in terms of Section 148 of the N.I.Act.

6. Per contra, the learned Counsel appearing for the non-applicant [original complainant] supported the impugned order by contending that the provisions of Section 148 of the N.I.Act is of mandatory nature, meaning thereby the Appellate Court has no discretion in the matter of directing to pay compensation. He would

submit that the discretion lies with the Appellate Court is only to the extent of deciding the amount of compensation in between 20% of fine/compensation to the maximum level. Moreover, it is submitted that the learned trial Court has rejected the defence which are sought to be argued in appeal. Moreover, this is not a stage to record prima facie opinion on merits of the appeal since it is subjudice.

7. The learned Counsel for the non-applicant has heavily relied on the decision of Supreme Court in case of **Surinder Singh Deswal and others .vrs. Virender Gandhi – (2019) 11 SCC 341**, to contend that the provisions of Section 148 of the N.I.Act is of mandatory nature. Particularly he took me through paragraph no.8 of the judgment to contend that the word "**may**" has to be read as "**shall**", in view of the aims and object of the amending Section 148 in the N.I. Act. He has further relied on the decision of Rajasthan High Court in case of **G. K. Construction Company .vrs. Balaji Muskan Samagri Stores – S.B.Criminal Misc. (Pet.) No.189/2022 decided on 04.03.2022**, wherein the learned Single Judge of the Rajasthan High Court after considering the decision of the Supreme Court in case of Surinder (supra), expressed that the

provisions of Section 148 of the N.I.Act are of mandatory nature.

8. In above referred case of Surinder, it has been ruled that in context of Section 148 of the N.I.Act, the word "may" is to be generally construed as "shall", but, not to direct to deposit is an exception for which special reasons are to be assigned. The dictum of Supreme Court postulates that by assigning special reasons, exception can be carved out to the mandate of Section 148 of the N.I.Act.

8. In view of above, I have considered the submissions advanced by the applicant on facts. As noted above, there must be overwhelming exceptional circumstances to escape from the statutory rigour of Section 148 of the N.I.Act. The statement of objects and reasons of the amendment of Section 148 of the N.I.Act, indicates that the amendment is purposively meant to strengthen the credibility of cheques and help trade and commerce on the basis of negotiable instruments. In the light of said position, one has to make out a very strong case to claim exception to the statutory mandate. In the light of said position, I have closely examined the reasons

canvassed by the applicant for exempting him from the statutory requirement.

9. The facts are such that the applicant [accused] has entered into an agreement of sale with brother of the non-applicant [complainant]. Pursuant to the said transaction, the brother of complainant has paid an amount of Rs.50 lakhs to the applicant. The deceased brother of the non-applicant has executed a Will, on the strength of which the non-applicant has demand refund of Rs.50 lakhs, on which the applicant had allegedly issued a cheque of Rs.50 lakhs, which was dishonoured. The trial Court has considered the competency of the non-applicant to claim the amount on the strength of testamentary document. The trial Court has emphasized on the point that in reply notice, the applicant has admitted issuance of cheque as well as liability. Undisputedly, the cheque was signed by the applicant and it was returned from the Bank may be for the reason of "no such account". The applicant has not raised any dispute regarding rest of the statutory requirement of issuance of demand notice and filing of the complaint within a stipulated period. In such a background, I do not find any exceptional case

to deviate from the very purport behind amending Section 148 of the N.I.Act.

10. In view of above, no case is made out to invoke the inherent powers of this Court, and therefore, Criminal Application is dismissed. No costs.

JUDGE