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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 6338/2024**

**KASHYAP SRIVASTAVA**

.....Petitioner

Through: Mr. Vikas Verma and Mr. Mayank  
Choudhary, Advocates.

versus

**SUNIL KUMAR**

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

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**14.08.2024**

**CRL.M.A. 24220/2024 & CRL.M.A. 24221/2024 (Exemption)**

Allowed, subject to all just exceptions.

**CRL.M.C. 6338/2024 & CRL.M.A. 24222/2024**

1. The Petitioner has approached this Court challenging an Order dated 21.05.2024 passed by the learned Additional Sessions Judge, Saket Courts, New Delhi in Criminal Appeal No.150/2024.
2. The instant case emanates from proceedings under Section 138 of the Negotiable Instruments Act. The Petitioner has been convicted for offences under Section 138 N.I. Act *vide* Order dated 13.03.2024 passed by the learned Metropolitan Magistrate, Saket Courts, New Delhi in Ct. Case 2698/2018, wherein the Petitioner has been directed to pay compensation of Rs.73 lakh to the Complainant. In default of payment of compensation, the Petitioner has been directed to undergo imprisonment for a period of six months. The said judgment has been challenged by the Petitioner by filing



Criminal Appeal No.150/2024.

3. The Appellate Court has directed the Petitioner to deposit 20% compensation amount within a period of 30 days. The Petitioner filed an application for waiver of the said amount primarily on the ground that he does not have the financial capacity to pay the said amount. The said appeal has been dismissed by the Appellate Court by the judgment impugned herein.

4. The learned Counsel for the Petitioner has drawn the attention of this Court to the deposition of the parties, which this Court is not inclined to go into at this juncture.

5. The Apex Court in Jamboo Bhandari v. Madhya Pradesh State Industrail Development Corporation Limited & Ors., (2023) 10 SCC 446, has succinctly laid down the mode and manner in which the courts must exercise their powers under Section 148 of the N.I. Act. Paragraphs 5 to 8 of the said judgment reads as under:-

*“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.”*

6. A perusal of the said judgment shows that normally the Appellate Court does impose condition of depositing 20% of the fine/compensation amount and only in exceptional cases which warrants suspension of sentence, the Appellate Court waives off the said stipulation. At the stage of deciding payment of compensation, courts are not expected to forensically examine or go into excruciating details on the merits of the case.

7. The Petitioner has not brought out any case on merits to justify as to how the present case would fall in the exception. The Petitioner has not been able to point out any infirmity in the Impugned Order passed by the Appellate Court directing the Petitioner to deposit 20% compensation amount. The primary case for which the Petitioner has come to this Court is the financial incapacity to pay the amount of compensation. It is open for the



Petitioner to approach the Appellate Court for staggered payment of such amount in instalments which the Appellate Court can do so. Liberty is granted to the Petitioner to that extent.

8. It is made clear that this Court has not expressed any opinion on the merits of the case.

9. With these observations, the petition is disposed of along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**AUGUST 14, 2024**

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