

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

**CRR 1751 of 2025
Rita Plastic Private Limited and Anr.
Vs.
The State of West Bengal & Anr.**

For the petitioner : Mr. Arindam Das,
Md. Bani Israil,
Mr. Aranya Basu,
Md. Fahim Sayud,
.....Advocates

For the opposite party : Mr. Apalak Basu,
Mr. Cedric Fernandez,
Mr. Shounak Mondal,
.....Advocates

Heard lastly on : 22.07.2025

Judgment on : 26.09.2025

Jay Sengupta, J:

1. This is an application challenging an order dated 25.02.2025 passed by the learned Judge, City Sessions Court, Calcutta in Criminal Appeal No.

165 of 2024 arising out of judgement dated 07.09.2024 passed by the learned Judicial Magistrate, 8th Court, Calcutta in C Case No. 74083 of 2016 under Section 138 of the Negotiable Instrument Act.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. The respondent no. 2 filed a complaint case vide C Case No. 74083 of 2016 under Section 138 of the Negotiable Instrument Act against the petitioners and another. On behalf of the complainant one Arunava Biswas deposed before the learned Trial Court by filing evidence-in-chief as PW 1 on 03.02.2022. The cross examination of PW 1 resumed on 30.03.2022. Further cross examination resumed on 08.09.2022. Subsequently, the petitioners, on 11.11.2022, filed an application under section 91 of the Code of Criminal Procedure as PW-1, Arunabha Biswas during his cross examination, was asked to produce agreement between Del Credere agency i.e. M/s Delhi Polymers and Chemicals Pvt. Ltd. by virtue of which the complainant company had received the cheque. As such, production of the agreement was very essential for the present case. During hearing it was submitted by the complainant that it was the internal matter of the company with whom the company entered into agreement. It was also submitted that the documents as sought by the company was irrelevant and pressed for rejection of the petition. The said application was rejection by an order dated 19.04.2023 by observing, "It appears to this court that the complainant has filed this case against the accused company under section 138 of the Negotiable Instrument Act, as such the duty is cast upon the complainant to prove their case with cogent documentary evidence. Accordingly, I do not find the

documents as prayed by the accused company is necessary in the present facts and circumstances in this case." Therefore, the petitioners herein tried to bring the suppressed facts on record of the Learned Trial Court, but by rejecting the application dated 11.11.2022, the facts which were suppressed were completely buried. The complainant after dishonouring the cheque issued a notice under section 138 (b) of the Negotiable Instrument Act, to the petitioners, where also it failed to mention the nature of liability and such notice was replied by the petitioners where also categorically stated that the petitioners did not have any legal debts and/or liabilities. As such, the question of discharge of legal debt never arose at all. But, the Learned Trial Court despite the aforesaid facts convicted the petitioners and acquitted the accused no.3 by a judgement dated 07.09.2024. The accused no.3 namely, Rita Batra was the wife of the accused/ petitioner no.2 namely, Ashok Kumar Batra. The wife of the petitioner No.2 was suffering from cancer for long time. Accordingly, the petitioner preferred appeal before the Learned Chief Judge, City Session Court at Bichar Bhawan. Subsequently the matter was taken up for hearing on the point of admission on 25.02.2025 and on the same date the respondent no.2/the complainant appeared before the Learned Appellate Court and filed hazira along with and application under section 148 of Negotiable Instrument act, praying, inter alia, to direct the appellant to deposit 50% of the compensation amount. During hearing on the point of admission the Learned Advocate for the Appellant made a prayer to file objection to the said application under section 148 of the Negotiable Instrument Act, but the Learned Court without granting any opportunity

directed in view of the judgement of the Hon'ble Apex Court in the case of Surinder Singh Deswal Versus Virender Gandhi, that the appeal was admitted subject to condition that the appellant would deposit 30% of the compensation amount before the Learned Trial Court within 22.04.2025. Accordingly, the revisional application was preferred. Preferring criminal appeal was a matter of right and such right could not be curtailed by imposing a condition to deposit 30% of the compensation amount. Without granting any opportunity to file objection to the application under section 148 of the Negotiable Instrument Act, the said application was allowed, considering the provision of section 148 of the Negotiable Instrument Act as mandatory in the light of the judgement Surinder Singh Deswal (supra), though on 25.02.2025 there were 2 more Benchmark Judgements passed by the Hon'ble Apex Court considering the Judgement Surinder Singh Deswal (supra), but no fair opportunity to the petitioners to produce these two judgements before the learned Appellate Court below. The Hon'ble Apex Court in Jamboo Bhandari vs. MP State Industrial Development Corporation Ltd. & Ors. (Criminal Appeal No. 2742 of 2023) considered the judgement, Surinder Singh Deswal (supra). Therefore, when Appellate Court considered the prayer under Section 389 of the Cr.P.C. of an accused who had been convicted for offence under Section 138 of the N.I. Act, it was always open for the Appellate Court to consider whether it was an exceptional case which warranted 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 came to the conclusion that it was an exceptional case, the

reasons for coming to the said conclusion must be recorded. In Jamboo Bhandari (supra), contrary view taken from the judgement of Surinder Singh Deswal (supra). The Hon'ble Apex Court in Muskan Enterprise & Anr. Vs. The State of Punjab & Anr. (Criminal Appeal No. 5491 of 2024), discussed the judgement Surinder Singh Deswal (supra) as well as Jamboo Bhandari and further directed that justice could be sufficiently served if the Sessions Court re-examined the issue of deposit being require to be made by the appellants in the light of the law down in the Jamboo Bhandari (supra) and the observation made above.

3. Learned counsel for the opposite party no. 2 submitted as follows. The compensation and its quantum so awarded by the learned Trial Magistrate was absolutely justified and well within the ambit of law. The Hon'ble Apex Court in R. Vijayan vs. Baby categorically held that compensation in cases under Section 138 of the Negotiable Instruments Act should be reasonable, sufficient, and serve as a deterrent against the recurrence of such offences. The Supreme Court had further emphasized that there was a need for a consistent approach towards awarding compensation and unless there existed special circumstances, the Courts should uniformly levy fine up to twice the cheque amount along with simple interest @ 9% per annum. In the present case, the compensation granted was neither excessive nor punitive, but aligned squarely with the principles enunciated by the Hon'ble Supreme Court. Therefore, the quantum of compensation so passed by the learned Trial Magistrate deserved to be upheld in its entirety. The judgment of conviction passed by the learned Trial Magistrate was the result of a

thorough and complete appreciation of the facts, evidence, and circumstances surrounding the case. It was a detailed and reasoned decision, meticulously spanning 55 pages, reflecting careful judicial scrutiny. Notably, the issuance of the cheque in question was an admitted fact, leaving no scope for dispute on that fundamental aspect. The petitioner's vague plea regarding failure to adduce defence evidence due to alleged miscommunication with the learned Advocate was wholly unsubstantiated and could not dilute the weight of the well-reasoned Judgment. The conviction stood firmly supported by the materials on record and called for no interference. Additionally, the appeal preferred by the petitioner was pending adjudication, and all pleas of the petitioner could be adjudicated upon in such appeal. The plea regarding opportunity not being afforded to the petitioner to file an objection was wholly specious and without substance. The impugned Order clearly revealed that no prayer was made by the petitioner for filing such an objection. Arguendo, even if it was hypothetically assumed that such a prayer was made, the non-acceptance of the same did not vitiate the impugned Order, particularly when every other submission of the petitioner had been duly considered, as evident from the impugned Order itself. Filing of a formal objection in this context was, at best, a procedural formality and its absence did not materially affect the adjudication. Furthermore, no plea of prejudice had been raised in the revision petition on account of such opportunity not being afforded. Section 148 was introduced by way of the Negotiable Instruments (Amendment) Act, 2018 with the primary object of addressing undue delays in the disposal of

appeals arising out of convictions under Section 138. The Negotiable Instruments (Amendment) Act, 2018 ("Amendment Act") became effective from the 1st of September 2018 after the Negotiable Instruments (Amendment) Bill, 2017 was given the Presidential assent on the 2nd of August 2018. It was observed that frivolous appeals were often preferred with the sole intent to evade payment of compensation, thereby defeating the object of the legislation which sought to ensure credibility in commercial transactions. To curb such practices, Section 148 empowered the appellate court to direct the appellant to deposit a minimum of 20% of the fine or compensation amount awarded by the Trial Court, pending appeal. This provision sought to strengthen the rights of the complainant and ensure expeditious recovery while balancing the rights of the accused. The moot term under Section 148 was "exceptional circumstance." As per the latest judgment of the Hon'ble Apex Court, the appellate court directing the appellant to deposit at least 20% of the fine or compensation amount was the norm, while dispensing with such deposit is the rare exception. The appellate court should record special reasons if it chose not to order such deposit and not vice versa. The burden lay on the appellant to establish exceptional circumstances warranting exemption, failing which the direction for deposit is mandatory. As already demonstrated hereinabove, failure to adduce defence evidence was no exceptional circumstance. That apart, admission of signature on the cheque leaf invited the presumption under Section 139 of the NI Act, and shifts the burden on the accused more vigorously. In the present case, the petitioner had miserably failed to make out any exceptional

circumstance justifying waiver of the statutory deposit. The plea regarding inability to adduce defence evidence was not an exceptional circumstance within the meaning of law. Moreover, since the appeal had been admitted, and is pending adjudication, the petitioner's statutory right had not been vitiated since the petitioner's contentions could be effectively considered at the appellate stage, and in the event of success, the deposited amount should be liable to be refunded to the petitioner. Reliance was placed on i) *Surinder Singh Deswal v. Virender Gandhi*, (2019) 11 SCC 341; ii) *Jamboo Bhandari v. M.P. SIDC Ltd.*, (2023) 10 SCC 446; iii) *Muskan Enterprises v. State of Punjab*, 2024 SCC OnLine SC 4107.

4. I heard the learned counsels for the parties and perused the revisional application, the affidavits and the written notes of submissions.

5. First, the merits of the case under Section 138 of the Negotiable Instrument Act need not be delved into in great details. It also appears that the petitioners' contention as regards a prayer under Section 91 of the Code of 1973 was rejected by the learned Trial Court. There was a conviction of the present petitioners by a judgement dated 07.09.2024 while a co-accused was acquitted.

6. By the impugned order, the learned Appellate Court directed the petitioners to deposit 30% of the compensation amount granted by the Trial Court within 22.04.2025 in view of the Section 148 of the Negotiable Instrument Act.

7. First, it does not appear that the petitioners were not heard. In fact, a detailed and reasoned order was passed after hearing of the respective parties.

8. In the instant case, the cheques in question were dishonoured of the year 2009. The same were dishonoured and notices were issued in 2009. A complaint case was filed. The petitioners were finally convicted in 2024.

9. In view of the detailed judgement and order of conviction and the delay in culmination of the proceeding before the Trial Court (in 2024), it was not unreasonable for the Appellate Court to direct the convicts to pay 30% of the compensation amount for hearing of the appeal in terms of Section 148 of the Negotiable Instrument Act.

10. Law is quite clear on this point. The norm would be to direct depositing of an amount of the compensation in terms of Section 148 of the said Act. It would only be an exception not to do so and in such event, special reasons are to be recorded. On this reliance was placed on a decision in *Surinder Singh Deswal vs. Virender Gandhi (supra)* and *Muskan Enterprises vs. State of Punjab (supra)*.

11. The decision in *Jamboo Bhandari (supra)* only supplements the view in *Surinder Singh Deswal (supra)*. It emphasizes on the power of the Court to consider any reason so as not to direct deposit of a sum in terms of Section 148 of the said Act. Such reason then have to be specifically recorded.

12. Neither was any such exceptional reason canvassed by the petitioners nor was did the Court find any special reason to act otherwise.

13. In view of the above discussions, I do not find any merit in this application.

14. Accordingly, the same is dismissed, however, without any order as to costs.

15. However, in the event the petitioners deposit the said sum amounting to 30% of the compensation amount before the learned Appellate Court within 60 days from this date, the learned Appellate Court would hear out the appeal in accordance with law and as expeditiously as possible.

16. The impugned order is modified to the above extent.

17. With these observations and directions, the revisional application is disposed of.

18. Urgent certified copy of this order be supplied to the learned counsels for the parties upon compliance of usual formalities.

(Jay Sengupta, J.)