AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.628 OF 2024

Sanjay Roopchand Bohra ... Applicant
V/s.
Mitesh Janak Turakiya & Anr. ... Respondents

Mr. Samir A. Vaidya with Ms. Zainab Khan, Mr. Aditya Parmar and Ms. Jagruti Mestry i/by Ms. Mariya Alphanso and Mr. Bhushan Magar for the applicant.

Mr. Girish B. Kedia with Mr. Manoj Agre for respondent No.1.

Mr. Sagar R. Agarkar, APP for respondent No.2-State.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 16, 2025

P.C.:

1. By this Criminal Revision Application, the applicant, who is the original accused in proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short "NI Act"), has challenged the order passed by the Appellate Court directing him to deposit 20% of the compensation amount in an appeal filed against his conviction and sentence.

2. The facts leading to the filing of the complaint under Section 138 of the NI Act are as follows. The complainant is proprietor of AVN Petro Chemicals. He is an importer and dealer in plastic raw material. The complainant supplied material to the accused who runs a factory at Vapi, Gujarat. The complainant issued invoices, challans, and E-way bills evidencing delivery of the material. As per the ledger account, an amount of Rs.30,00,000 was outstanding against the accused. Against this liability, the accused issued cheque No.000971 dated 15 January 2019 for Rs.30,00,000 drawn on Bank of Baroda, Mind Space, Malad (West) Branch. The complainant deposited the said cheque in his account with Oriental Bank of Commerce. The cheque was returned unpaid with the endorsement "Funds Insufficient" vide memo dated 27 February 2019. Despite demand made by the complainant, the accused failed to make payment. The complainant thereafter issued demand notice dated 20 March 2019. The notice was duly served, but the accused did not pay the cheque amount within the statutory period. The complainant was, therefore, constrained to file the present complaint.

3. The learned Magistrate, after considering the evidence and material on record, held the complainant's case proved, convicted the accused, and sentenced him to undergo simple imprisonment for nine months. The Magistrate also directed the accused to pay compensation of Rs.44,17,500 to the complainant within three months.

4. The accused preferred Criminal Appeal No.214 of 2024 challenging the conviction and sentence. The Appellate Court suspended the sentence and released the accused on bail on condition of his depositing 20% of the compensation amount, i.e., Rs.8,83,000, as contemplated under Section 148 of the NI Act. The order was passed noting that the accused had not deposited the entire interim compensation of Rs.6 lakh as earlier directed under

Section 143-A of the NI Act. The complainant, therefore, sought an additional deposit of 20%. The Appellate Court, however, kept open the question of Rs.5 lakh raised by the accused to be decided at final hearing, and in the meantime directed deposit of 20% of the compensation.

5. Learned counsel for the applicant submitted that in *Jamboo Bhandari vs. M.P. Industrial Development Corporation Ltd. & Ors., (2023) 10 SCC 446*, the Supreme Court held that deposit of 20% for suspension of sentence is not mandatory. According to him, once suspension of sentence is sought, it is presumed that such suspension should be granted without condition. Reliance was also placed on *Muskan Enterprises vs. State of Punjab, 2024 SCC OnLine SC 4107*, wherein the Supreme Court clarified that the requirement of 20% deposit is discretionary. He, therefore, submitted that the direction to deposit 20% of the compensation is unsustainable.

6. On the other hand, learned counsel for the complainant submitted that the cheque amount itself was Rs.30 lakh. The defenses raised by the accused before the Trial Court were that the complainant wrongly calculated GST and interest, that Rs.5 lakh was already paid through his sister concern RSB Packing, and that the cheque was issued only as security. These defenses were examined in detail by the Trial Court and were rejected. The alleged payment of Rs.5 lakh was not proved. In cross-examination, the accused himself stated that he would have to verify it. Further, in his statement under Section 313 of the Code of Criminal Procedure, the accused admitted liability of about Rs.14

to 15 lakh. Thus, all ingredients of Section 138 were proved, and the conviction was proper.

7. Referring to the judgment in *Jamboo Bhandari (supra)*, he submitted that the Supreme Court clarified that the earlier view in *Surinder Singh Deswal & Ors. vs. Virender Gandhi, (2019) 11 SCC 341,* did not lay down an absolute rule of mandatory deposit of 20%. The discretion lies with the Appellate Court. The Court may dispense with the condition if it finds that insisting on deposit would cause injustice or deprive the appellant of his right of appeal. However, such exceptions must be specifically recorded. It was thus held that ordinarily, the Appellate Court is justified in imposing the condition of deposit as per Section 148.

8. He further submitted that in *Muskan Enterprises (supra)*, the Supreme Court reiterated the same position. Whether to direct deposit under Section 148 is a matter of discretion to be exercised judiciously. Therefore, according to him, the Appellate Court committed no error, and this Criminal Revision Application deserves dismissal.

9. Having considered the rival submissions and material placed on record, this Court finds that the conviction of the applicant for the offence under Section 138 of the NI Act is based on a proper and detailed appreciation of evidence by the Trial Court. The Trial Court examined the transaction between the parties, the issuance of the cheque, its dishonour, service of statutory notice, and non-payment within the prescribed period. All the necessary ingredients of the offence were thus established.

10. The defenses raised by the applicant, namely that the cheque was given by way of security, that a part-payment of Rs.5 lakh was made through a sister concern, and that the complainant wrongly calculated GST and interest, were duly considered and rejected on cogent reasoning. The alleged payment of Rs.5 lakh was not proved by any reliable evidence. Even during cross-examination, the accused admitted that he would have to verify the said transaction. The plea of cheque being issued as security was also unsupported by any documentary proof. On the contrary, in his statement recorded under Section 313 of the Code of Criminal Procedure, the applicant admitted liability of Rs.14 to 15 lakh towards the complainant. Such admission further weakens the defense and supports the complainant's case of existing liability.

11. In this background, the Appellate Court, while suspending the sentence, directed the applicant to deposit 20% of the compensation amount as contemplated under Section 148 of the NI Act. Section 148 was inserted to ensure that frivolous appeals do not delay the rightful dues of the complainant and to strike a balance between the right of the accused to appeal and the complainant's right to speedy recovery. The object of Section 148 would be defeated if suspension of sentence is granted unconditionally in every case.

12. The judgments of the Supreme Court in *Jamboo Bhandari* and *Muskan Enterprises* have clarified the scope of Section 148 of the NI Act. The Apex Court has held that the requirement of directing deposit of 20% of the fine or compensation is not an absolute or mandatory rule. It is a matter of discretion vested in the Appellate Court. Such discretion, however, is not unguided. It must be exercised on a consideration of the facts and circumstances of each case, and reasons must be recorded if the Court departs from the statutory prescription.

13. The law, therefore, strikes a balance. It does not compel deposit in every appeal as a rigid rule, nor does it permit the Appellate Court to grant suspension of sentence without applying its mind to the rights of the complainant. The discretion is to be exercised judiciously, ensuring that the statutory object of protecting the complainant from undue delay and securing the appeal process is not frustrated.

14. In the present case, the Appellate Court has directed the applicant to deposit 20% of the compensation while suspending the sentence. This direction is based on relevant considerations. The complainant specifically brought to the notice of the Appellate Court that the earlier interim compensation of Rs.6 lakh, as directed under Section 143-A of the NI Act, had not been fully deposited. The Court was, therefore, justified in exercising its discretion by directing further deposit of 20% of the compensation amount.

15. No perversity, arbitrariness, or illegality can be found in the exercise of such discretion. The Appellate Court has acted well within the framework of Section 148, and the order passed cannot be said to have caused prejudice to the applicant. On the contrary, it ensures that the complainant’s interest is protected during pendency of the appeal, which is in line with the spirit of the legislation.

16. It is well settled that the revisional jurisdiction of this Court is limited. A Revisional Court does not sit as a Court of appeal to re-assess or re-appreciate the evidence. Its role is confined to examining the legality, propriety, and correctness of the order under challenge. Unless the order suffers from patent illegality, gross perversity, or results in miscarriage of justice, interference is not warranted.

17. In the present case, the Appellate Court has considered the relevant statutory provisions, namely Section 148 of the NI Act, as well as the factual background, including the complainant's grievance regarding non-deposit of interim compensation under Section 143-A. The Court has then exercised its discretion by directing deposit of 20% of the compensation. The order reflects application of mind and is consistent with the law laid down by the Supreme Court.

18. The applicant has not demonstrated that the discretion exercised by the Appellate Court is arbitrary or perverse. No jurisdictional error or material irregularity is pointed out. The order does not disclose any legal infirmity which would justify interference in revisional powers. On the contrary, the order strikes a fair balance between the right of the accused to pursue his appeal and the right of the complainant to secure part of the compensation during pendency of the proceedings.

19. Thus, this Court finds no reason to invoke revisional jurisdiction to unsettle the order passed by the Appellate Court.

20. The Criminal Revision Application stands dismissed.

(AMIT BORKAR, J.)