

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 950 OF 2025

Rashmikanth Zaverchand Shah

...Petitioner

Versus

1. Dharmesh Chapsi Ghada

2. The State of Maharashtra

...Respondents

Mr. Rohaan Cama, a/w Prerak Choudhary, i/b Prerak
Choudhary, for the Petitioner.

Mr. Jatin Karia (Shah), a/w Snehankita Munj, Dipti Jatin
Karia, Shraddha Kamble, for Respondent No.1.

Mr. Ashok Gawai, APP for the State-Respondent No.2.

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CORAM: N. J. JAMADAR, J.

RESERVED ON: 18th SEPTEMBER, 2025

PRONOUNCED ON: 14th OCTOBER, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India the petitioner – appellant takes exception to an order dated 3rd December, 2025 in Criminal Misc. Application No.1995 of 2024, passed by the learned Additional Sessions Judge for Greater Mumbai at Mazgaon, whereby while suspending the sentence imposed on the appellant – accused by the learned Magistrate in CC No.1137/SS/2021, the learned Additional Sessions Judge directed the appellant to

deposit 20% of the compensation awarded by the learned Magistrate under Section 148(1) of the Negotiable Instruments Act, 1881 (“the NI Act, 1881”).

3. Shorn of superfluities, the background facts can be stated as under:

3.1 The respondent – complainant lodged a complaint under Section 138 of the NI Act, 1881, with the allegation that the complainant had advanced by way of loan a sum of Rs.2,67,75,000/-, on various occasions, during the period 10th April, 2018 to 20th February, 2021. The accused had acknowledged the liability to repay the said amount by executing Demand Promissory Notes. Towards the payment of the said loan amount, the accused has drawn three cheques for the sum of Rs.89,25,000/-, each, payable on 15th March, 2021. All the cheques were dishonored on presentment. A demand notice was issued on 15th April, 2021. The accused neither complied with the demand nor gave any reply thereto. Hence, the complaint.

3.2 The accused contested the existence of the debt or liability and sought to dispel the presumptions by contending that the complainant had not advanced the loan, as alleged, and the subject cheques were obtained by way of security for

some business transactions. The complainant had fabricated the Demand Promissory Note. Even the demand notice was not served on the accused. It was, *inter alia*, contended that the alleged claim of the complainant of having advanced a huge amount of Rs.2,67,75,000/- in cash was otherwise in violation of the provisions of Income Tax Act, 1961 and related to unaccounted transactions, which were illegal.

3.3 By a judgment and order dated 2nd September, 2024, the learned Magistrate found the accused guilty of the offence punishable under Section 138 of the NI Act, 1881 and sentenced him to suffer simple imprisonment for one year and also pay compensation to the tune of Rs.2,67,75,000/- with a default stipulation.

3.4 Being aggrieved, the accused preferred an appeal before the Court of Session.

3.5 By the impugned order, the learned Sessions Judge directed the accused to deposit 20% of the compensation amount as a condition for suspension of sentence. The learned Sessions Judge was of the view that the accused failed to make out any exceptional circumstance to suspend the sentence without making such deposit.

4. Being aggrieved, the accused has invoked the writ jurisdiction.

5. I have heard Mr. Rohaan Cama, the learned Counsel for the petitioner – accused, and Mr. Jatin Karia, the learned Counsel for the respondent – complainant, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

6. Mr. Cama, the learned Counsel for the petitioner, mounted a multi-pronged challenge to the impugned order. Firstly, the learned Sessions Judge, according to Mr. Cama, lost sight of the fact that the power to direct the appellant to make the deposit of a portion of the amount of the compensation awarded by the trial Court is discretionary. The learned Sessions Judge, as is evident from the impugned order, proceeded to decide the issue as if it was mandatory to direct the appellant to deposit the amount. Secondly, the learned Sessions Judge had not ascribed any reason to arrive at the conclusion that the petitioner failed to make out an exceptional case. No reason, worth its name, has been ascribed by the learned Sessions Judge. Thirdly, the learned Sessions Judge, did not delve into the substantial grounds of challenge to the judgment of the trial Court, which make out

an exceptional case. The very fact that the complainant claimed to have advanced a huge amount of Rs.2,67,75,000/- in cash ought to have put the court on guard. Cash transactions have been judicially recognized to be unaccounted and illegal transactions. To insist for deposit of 20% of the compensation amount, even when the underlying transaction was in cash, would render the right of appeal illusory, submitted Mr. Cama.

7. To buttress these submissions, Mr. Cama placed reliance on a judgment of the Supreme Court in the case of *G. Pankajakshi Amma and others vs. Mathai Mathew (Dead) through LRs and another*¹ and a decision of a learned Single Judge of this Court in the case of *Sanjay Mishra vs. Kanishka Kapoor @ Nikki and another*².

8. Mr. Cama, however, fairly submitted the decision in the case of *Sanjay Mishra* (supra) has been overruled by a Division Bench of this court in the case of *Prakash Madhukarrao Desai vs. Dattatraya Sheshrao Desai*³. Nonetheless, in view of the decision in the case of *G. Pankajakshi Amma* (supra) and a recent judgment of the

1 (2004) 12 Supreme Court Cases 83.

2 2009(4) Mh.L.J. 155.

3 (2023) 5 Mah LJ 709.

Supreme Court in the case of *Correspondence, RBANMS Educational Institution vs. B. Gunasheka & Another*⁴, the issue of unenforceability of the liability arising out of cash transactions can not be said to be conclusively settled.

9. Mr. Cama would also urge that, the learned Sessions Judge did not also delve into the aspect of due service of the demand notice, and the petitioner not being a drawer of one of the cheques, which goes to the root of the matter. Had the learned Sessions Judge dealt with these challenges and then arrived at the conclusion that no exceptional case was made out, different considerations would have come into play. The impugned order, according to Mr. Cama, singularly lacks reasons for not suspending the sentence without imposing the condition of deposit.

10. Per contra, Mr. Karia, the learned Counsel for the respondent - complainant, would urge the transactions in question cannot be termed to be unaccounted transactions. The advances to the petitioner made by the complainant in cash have been duly reported in the annual tax reports. There is overwhelming material in the form of the promissory notes under which the liability has been clearly

⁴ AIR 2025 SC (Civil) 1425.

acknowledged. Therefore, the challenge sought to be mounted on the premise that the underlying transactions are unaccounted transactions is unworthy of consideration. Mr. Karia further submitted that, it is not an immutable rule of law that under no circumstances, the liability incurred out of the transactions in cash can be enforced. Even otherwise, cash transactions are not *per se* illegal or void. Reliance was placed by Mr. Karia on a judgment of the learned Single Judge of this Court in the case of *Dr. Jagannath Ganesh Hegde vs. M/s. In Depth Entertaining Arts Pvt. Ltd. and ors.*⁵.

11. Referring to the conduct of the petitioner, Mr. Karia would urge, the petitioner had sought extension of time before the learned Sessions Judge to make the deposit and, by an order dated 7th February, 2025, the time came to be extended. Despite undertaking to pay the amount, the petitioner has invoked the writ jurisdiction so as to deprive the complainant of his legitimate claim.

12. Section 148(1) of the NI Act, 1881 reads as under:

“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 143A.”

13. Section 148(1) of the NI Act, 1881 was introduced by the Parliament as the payees suffered grave prejudice on account of the dilatory tactics of unscrupulous drawers of dishonored cheques and due to easy filing of appeals and stay to the sentence imposed by the trial Court, in those appeals. The Parliament was of the view that such delay has compromised the sanctity of the cheque transactions. Thus, to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonored cheques and discourage frivolous and unnecessary litigation which would save time and money, the Parliament inserted Section 148 empowering the Appellate Court to order the appellant to deposit such sum which shall be a minimum of 20% of fine or compensation awarded by the trial Court.

14. Section 148 of the NI Act, 1881 does not take away the right of appeal of the accused. It empowers the Appellate Court to order the appellant to deposit a portion of the fine or compensation awarded by the trial Court as a condition for the suspension of the sentence.

15. In the case of *Surinder Singh Deswal alias Colonel S. S. Deswal and ors. vs. Virender Gandhi*⁶, the Supreme Court, expounded the objective and the import of the provisions. The Supreme Court emphasised that the provisions of Section 148 of the NI Act, 1881 were required to be interpreted in a purposive manner so as to advance the object of the Act. The observations of the Supreme Court in paragraph 8 read as under;

“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 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 Cr.P.C. 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, 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 transaction, Parliament has thought it fit to amend Section 148 of 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.”

(emphasis supplied)

16. In the case of *Jamboo Bhandari vs. Madhya Pradesh State Industrial Development Corporation Limited and Others*⁷, the Supreme Court expounded that under Section 148(1) of the NI Act, 1881, discretion is vested in the Appellate Court whether or not to direct the accused to make the deposit of 20% of the amount of fine or compensation awarded by the trial Court. It was enunciated that it was 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. Explaining the ratio of the decision of *Surinder Singh Deswal* (supra), the Supreme Court enunciated the law as under:

⁷ (2023)

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, 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 Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. 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.

(emphasis supplied)

17. In the case of *Muskan Enterprises and another vs. State of Punjab and Another*⁸, the Supreme Court had an occasion to consider the apparent cleavage in the judicial opinions in the cases of *Surinder Singh Deswal* (supra) and *Jamboo Bhandari* (supra). The Supreme Court clarified the legal position as under:

“26. Wearing the glasses of the statute-maker, we need to read the text as set in the context. What is most significant is that the legislature has used both the verbs ‘may’ and shall’ in sub-section (1) of Section 148, N.I. Act, but in different contexts. As we read and understand the sub-section, what we find is that the verb ‘may’, implies discretion; and, if intended to have its natural meaning, it would refer to the discretion left to the Appellate Court to determine as to whether such court should order any deposit to be made by the appellant or not pending hearing of the appeal against the conviction and sentence recorded by the trial court. What *Jamboo Bhandari (supra)* lays down is that deposit may not be ordered if the Appellate Court finds a case to be exceptional not calling for a deposit and the reasons for not ordering a deposit are recorded in the order. On the contrary, the verb ‘shall’ used in the same sentence and distanced

from the verb 'may' by 8 (eight) words, typically implies an obligation or duty that is referable to the quantum of deposit, that is, the deposit, in any case, must not be less than 20% of the fine or compensation awarded by the trial court. What follows is that once the Appellate Court is satisfied that a deposit is indeed called for, in an appropriate case, such court's power is in no way fettered to call upon the appellant to deposit more than 20% of the awarded compensation, but in no case can it be less than 20%. Interestingly, while the proviso to sub-section (1) and sub-section (2) of Section 148 use 'shall' in the relevant context, sub-section (3) again reverts to 'may' and its proviso to 'shall'. User of the verbs 'may' and 'shall' in different contexts in the same section is clearly suggestive of the legislative intent to mean what it said.

27. We may take the discussion a little forward to emphasize our point of view. There could arise a case before the Appellate Court where such court is capable of forming an opinion, even in course of considering as to what would be the appropriate quantum of fine or compensation to be kept in deposit, that the impugned conviction and the consequent sentence recorded/imposed by the trial court is so wholly incorrect and erroneous that it is only a matter of time for the same to be set aside and that ordering a deposit would be unnecessarily burdensome for the appellant. Such firm opinion could be formed on a plain reading of the order, such as, the conviction might have been recorded and sentence imposed without adherence to the mandatory procedural requirements of the N.I. Act prior to/at the time lodging of the complaint by the complainant rendering the proceedings vitiated, or the trial court might have rejected admissible evidence from being led and/or relied on inadmissible evidence which was permitted to be led, or the trial court might have recorded an order of conviction which is its *ipse dixit*, without any assessment/analysis of the evidence and/or totally misappreciating the evidence on record, or the trial court might have passed an order failing to disclose application of mind and/or sufficient reasons thereby establishing the link between the appellant and the offence, alleged and found to be proved, or that the compensation awarded is so excessive and outrageous that it fails to meet the proportionality test: all that, which would evince an order to be in defiance of the applicable law and, thus, liable to be labelled as perverse. These instances, which are merely illustrative and not exhaustive, may not arise too frequently but its possibility cannot be completely ruled out. It would amount to a travesty of justice if exercise of discretion, which is permitted by the legislature and could indeed be called for in situations such as these pointed out above, or in any other appropriate situation, is not permitted to be exercised by the Appellate Court by a judicial interpretation of 'may' being read as 'shall' in sub-section (1)

of Section 148 and the aggrieved appellant is compelled to make a deposit of minimum 20% of the fine or compensation awarded by the trial court, notwithstanding any opinion that the Appellate Court might have formed at the stage of ordering deposit as regards invalidity of the conviction and sentence under challenge on any valid ground. Reading ‘may’ as ‘may’ leads to the text matching the context and, therefore, it seems to be just and proper not to denude the Appellate Court of a limited discretion conferred by the legislature and that is, exercise of the power of not ordering deposit altogether albeit in a rare, fit and appropriate case which commends to the Appellate Court as exceptional. While there can be no gainsaying that normally the discretion of the Appellate Court should lean towards requiring a deposit to be made with the quantum of such deposit depending upon the factual situation in every individual case, more so because an order under challenge does not bear the mark of invalidity on its forehead, retention of the power of such court not to order any deposit in a given case (which in its view and for the recorded reasons is exceptional) and calling for exercise of the discretion to not order deposit, has to be conceded. If indeed the legislative intent were not to leave any discretion to the Appellate Court, there is little reason as to why the legislature did not also use ‘shall’ instead of ‘may’ in sub-section (1). Since the self-same section, read as a whole, reveals that ‘may’ has been used twice and ‘shall’ thrice, it must be presumed that the legislature was well and truly aware of the words used which form the skin of the language. Reading and understanding the words used by the legislature in the literal sense does not also result in manifest absurdity and hence tinkering with the same ought to be avoided at all costs. We would, therefore, read ‘may’ as ‘may’ and ‘shall’ as ‘shall’, wherever they are used in Section 148. This is because, the words mean what they say.”

(emphasis supplied)

18. On a textual and contextual interpretation of the provisions contained in Section 148(1) and the use the words, “may” and “shall” in the main part of sub-section (1) as well as in the proviso to sub-section (1) of Section 148, the Supreme Court has postulated that *Jamboo Bhandari* (supra) lays down that deposit may not be ordered if the Appellate Court finds a case to be exceptional not calling for a deposit

and the reasons for not ordering a deposit are to be then recorded in the order. However, once the Appellate Court is satisfied that a deposit is indeed called for, in an appropriate case, such court's power is in no way fettered to call upon the appellant to deposit more than 20% of the awarded compensation, and in no case can it be less than 20%.

19. The legal position which thus emerges is that discretion is undoubtedly vested in the Appellate Court in the matter of ordering the appellant – accused to make the deposit. However, the discretion ought to be exercised in such fashion as to advance the object with which Section 148 of the NI Act, 1881, has been introduced. It is in an exceptional case, where the order of deposit would amount to putting an unnecessary and uncalled burden on the appellant – accused, the Appellate Court ought to refrain from making such order. Ordinarily, such situation may arise where the order of conviction and sentence impugned before the Appellate Court suffers from manifest errors and illegalities or there were other peculiar circumstances which render the order of deposit unjust and inequitable.

20. The principal submission of Mr. Cama was that, in the case at hand, on account of the fact that the alleged advance

of a huge amount of Rs.2,67,75,000/- was in cash, the illegality of the transaction was writ large. Such an unaccounted transaction is *per se* illegal and, consequently, the subject cheques could not have been said to have been drawn in discharge of a legally enforceable debt or liability. Attention of the Court was invited to the observations of the Supreme Court in the case of ***G. Pankajakshi Amma*** (supra).

21. In the said case, the respondent therein had advanced money in cash. The respondent was engaged in money lending business. The respondent had not maintained the books of account as mandated under the provisions of Kerala Money Lenders Act, 1958. In that context, the Supreme Court observed, where the respondent had paid the amount in cash and those transactions were unaccounted then they were illegal transactions. No Court can come to the aid of the party in an illegal transaction. In such cases, the loss must be allowed to lie where it falls. As those transactions were unaccounted, the Court could not have lent its hand and passed the decree.

22. In the case of ***Sanjay Mishra*** (supra) a learned Single Judge of this Court, in a case arising out of a complaint under Section 138 of the NI Act, 1881, in the context of

categorical admissions that the amount advanced was entirely in cash and was unaccounted, and the same was not disclosed in the Income Tax Return, held that the liability to repay unaccounted cash amount cannot be said to be a legally enforceable liability within the meaning of the Explanation to Section 138 of the NI Act, 1881.

23. At this stage, it is necessary to immediately notice that discordant views were recorded in other judgments, necessitating a reference to a Division Bench of this Court.

24. In the case of *Prakash Desai* (supra) the Division Bench considered the following question:

“Whether in case the transaction, is not reflected in the Books of account and/or the Income Tax Returns of the holder of the cheque in due course and thus is in violation of the provisions of section 269-SS of the Income Tax Act, 1961 whether such a transaction, can be held to be “a legally enforceable debt” and can be permitted to be enforced, by institution of proceedings under section 138 of the Negotiable Instruments Act.?”

25. After considering the provisions of the NI Act, 1881 and Income Tax Act, 1961 and the governing precedents, the Division Bench held that a transaction not reflected in the books of accounts and/or Income Tax Returns of the holder of the cheque in due course can be permitted to be enforced by instituting proceedings under Section 138 of the NI Act, 1881 in view of the presumption under section 139 of the Act

of 1881 that such cheque was issued by the drawer for the discharge of any debt or other liability, execution of the cheque being admitted. Violation of Section 269-SS and /or Section 271-AAD of the Income Tax Act, 1961 would not render the transaction unenforceable under Section 138 of the NI Act, 1881. The decision in ***Sanjay Mishra*** (supra) was overruled.

26. Though Mr. Cama sought to resurrect the controversy by placing reliance upon a judgment of the Supreme Court in the case of ***RBANMS Educational Institution*** (supra), wherein the Supreme Court gave directions to the courts and authorities to intimate the transactions in which it is claimed that Rs.2,00,000/- and above was paid by cash, to the Income Tax Authorities, yet, in the context of the prosecution under Section 138 of the NI Act, 1881 a recent pronouncement of the Supreme Court in the case of ***Sanjabi Tari vs. Kishore S. Borcar and anr.***⁹ puts the controversy at rest.

27. The Supreme Court disapproved the view of the Kerala High Court in the case of ***P. C. Hari vs. Shine Varghese and anr.***¹⁰, wherein it was held that a debt created by a cash

9 Cri.Appeal No.1755/2010 dt.25/9/2025.

10 2025 SCC OnLine Ker 5535.

transaction above Rs.20,000/- in violation of the provisions of Section 269SS of the Income Tax Act, 1961 was not a legally enforceable debt. The Supreme Court observed as under:

“19. Recently, the Kerala High Court in *P.C. Hari vs. Shine Varghese & Anr.* has taken the view that a debt created by a cash transaction above Rs. 20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short ‘IT Act, 1961’) is not a ‘legally enforceable debt’ unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above Rs. 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act, 1961 state that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of ‘legally enforceable debt’ cannot be countenanced. Accordingly, the conclusion of law in *P.C. Hari* (supra) is set aside.”

(emphasis supplied)

28. In view of the aforesaid enunciation of law, the edifice of the submission of Mr. Cama that an exceptional case was made out on account of the underlying transaction having been entered into in cash, gets dismantled.

29. On facts, Mr. Karia was justified in canvassing a submission that the transactions in question cannot be said to be unaccounted as the complainant had reported those

transactions as loans advanced to the accused in the Income Tax Returns. This Court may hasten to add that the reference to the Income Tax Returns is only for the purpose of ascertaining whether the accused had made out an exceptional case for the waiver of the deposit, and these observations may not be construed as an expression of opinion on the merits of the appeal to be decided by the learned Sessions Judge.

30. The other grounds of non-service of the notice and the petitioner not being the drawer of one of the cheques, though a signatory thereto, are, at best, contentious and debatable issues. It is necessary to note that each and every contentious and debatable issue does not amount to an exceptional circumstance. In every appeal filed by the accused, debatable issues in regard to the legality, propriety and correctness of the judgment impugned therein, could be raised. However, every debatable issue may not justify an inference that an exceptional case is made out. Such an inference can be legitimately drawn where the order of the trial Court is *ex facie* perverse, manifestly illegal, in derogation of the settled principles of law, or there is non-compliance of the statutory requirements or the Appellate

Court finds the existence of debt or liability *prima facie* doubtful.

31. True, it could be urged that the learned Sessions Judge could have ascribed more elaborate reasons to come to a conclusion that the appellant failed to make out an exceptional case. However, that does not necessarily imply that the impugned order is sans reasons.

32. In any event, this Court has considered the principal contention canvassed on behalf of the petitioner premised, on the underlying transaction being a cash transaction, and found the same, in view of the development in law, not worthy enough to constitute an exceptional circumstance. Therefore, no interference is warranted in the impugned order.

33. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed.
- (ii) Rule discharged.
- (iii) No order as to costs.

[N. J. JAMADAR, J.]