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

CRIMINAL WRIT PETITION NO. 704 OF 2025

...

1] M/s Kesuram Khanchand,
Thr. Prop. Chandrabhan S/o Kesuram Kewalramani,
Aged: 66 years, Occ: Business.

2] Chandrabhan S/o Kesuram Kewalramani,
Aged: 66 years, Occ: Business,
Both R/o Situated at 21, Nasikkar Plots,
Deepnagar Road, Amravati,
Maharashtra – 444606.

... **PETITIONERS**

- - V E R S U S - -

Suresh S/o Ghanshyamdas Chanchalani,
Aged: 65 years, Occ.: Business,
R/o Flat No. 501, Naman Exatica,
Clark Town, Nagpur.

... **RESPONDENT**

Mr. Shamish Agrawal, Advocate for the Petitioners.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 11, 2025.

PIYUSH MAHAJAN

ORAL JUDGMENT :

Heard the learned counsel for the petitioners.

2. The present Petition is filed under Article 226 of the Constitution of India. The petitioners are challenging the order dated 24/06/2025 passed by the learned District Judge-10 and Additional Sessions Judge and Special Court for Differently-able persons, Senior Citizens and Marginalized Sections of Society, Nagpur, wherein, the application at Exh.4 filed by the petitioner for suspension of sentence was allowed and the sentence is suspended till decision of the appeal, subject to deposit of 20% of the compensation amount, i.e., Rs.3,50,000/- within 15 days in the Trial Court. The petitioner is challenging only the condition of depositing 20% of compensation amount, i.e., Rs.3,50,000/- within 15 days in the Trial Court.

3. Brief facts of the case are that, the respondent herein, i.e., original complainant filed complaint under Section 138 of the Negotiable Instruments Act, 1881. It is alleged by the respondent that on 28/12/2017, he had deposited an amount of Rs.10,00,000/-

in the account of the accused by cheque bearing No.000222 dated 28/12/2017 drawn on Lakshmi Vilas Bank, Nagpur Branch, Nagpur, through broker Rhythm Investment. It was agreed by the Petitioner No.2 that 1.25% of interest per month would be payable. The petitioner no.2 has executed the receipt on 28/12/2017 for himself and the petitioner No.1, and acknowledged the receipt of the amount from the respondent. The said amount is payable on demand and no refund period is mentioned in the receipt. It is further alleged that till 01/04/2020, the petitioner paid the interest, thereafter failed to pay the interest. The respondent was in need of money, and therefore, demand was made in the week of September, 2022, to pay the principal amount and the interest accrued thereon. The petitioners agreed to refund the principal amount of Rs.10,00,000/- to the respondent and issued a cheque bearing No.010975 dated 12/09/2022 for an amount of Rs.10,00,000/- drawn on Bank of Baroda, Amravati Branch, Amravati. When the cheque was presented, the cheque dishonoured on the ground of 'Insufficient Funds', and therefore, demand notice was issued, however, the petitioners failed to pay the cheque amount within the stipulated period, and therefore, complaint came to be filed against petitioners vide S.C.C. No.22047/2022. The said summary case came to be decided and the petitioner No.2 who is the proprietor of petitioner No.1 was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, and directed to undergo simple imprisonment for six months, and to pay compensation of Rs.17,50,000/- to the complainant within two months from the date of order with 9% per annum from the date of order till realization of the amount. It was further directed, if the accused failed to pay compensation amount within two months from the date of the order, then he shall undergo default sentence of two months.

4. Thereafter, the accused / petitioner preferred an appeal before the District and Sessions Judge, Nagpur, on various grounds. The accused No.2 has also preferred application at Exh.4 for suspension of sentence. The learned District Judge-10 and Additional Sessions Judge and Special Court for Differently-able persons, Senior Citizens and Marginalized Sections of Society, Nagpur, by an order dated 24/06/2025 was pleased to suspend the sentence, subject to deposit of 20% of the compensation amount, i.e., Rs.3,50,000/- within 15 days in the Trial Court.

5. Being aggrieved with the condition of deposit of 20% of the compensation amount, the petitioner filed the present Writ Petition on the ground that the petitioner No.2 is old age person and is not in a position to pay 20% of the amount due to his financial conditions. The appeal was preferred on several grounds amongst other grounds, one important ground was that it is a time barred claim, as the liability against the appellant was disputed long back. Even the status of respondent as the proprietor of S.R. Enterprises is disputed. It is further submitted that the evidence adduced on record by the complainant is not admissible under law as the documents are not proved. Therefore, *prima facie,* a plausible defence has been raised by the appellant. So as to substantiate the above contentions, reliance is placed on ***Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Ltd. & Ors. Reported in (2023) 10 SCC 446.***

6. I have considered the submissions of the petitioners.

Section 148 of the Negotiable Instruments Act, deals with the power of Appellate Court to order payment pending appeal against conviction. For ready reference, Section 148 of the Negotiable Instruments Act, is reproduced herein below:-

> *"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 143-A.*
>
> *(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.*
>
> *(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:*

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

While interpreting the aforesaid provision, the Supreme Court in the case of ***Surinder Singh Deswal alias Colonel S.S. Deswal & Others VS Virender Gandhi & Another Reported in (2019) 11 SCC 341***, has held 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 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 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 CrPC 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, 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 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 transactions, Parliament has thought it fit to amend Section 148 of the 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."*

7. Thus, the Supreme Court held that use of word "may" in Section 148 has to be read as "shall" and Appellate Courts must ordinarily order deposit of minimum 20% of compensation or fine amount imposed by the Trial Court. It is further observed that not directing deposit of amount is an exception which must be coupled with assignment of special reasons for not ordering deposit of such amount. In the case of ***Jamboo Bhandari (supra)***, while considering the same issue and while relying on Para 8 of the judgment of

Surinder Singh Deswal (supra), the Supreme Court held as under:-

> *"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 the appellate court considers the prayer under Section 389 Cr.P.C. of an accused who has been convicted for offence under Section 138 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."*

8. Further, it would be useful to refer to the latest order of the Supreme Court in the case of ***M/s R A Santana Marketing Services Pvt. Ltd. Vs. JMK Technology Pvt. Ltd. & Ano. (Criminal***

Appeal No.3635/2025), in Para 5 of the said order, Supreme Court has held as under:

> *"5. It is true that personal liberty is paramount but when there is suspension of sentence with a direction, the respondent convict has to abide by the condition imposed while protecting his personal liberty. However, if that condition is not followed, the interim protection granted is liable to be revoked as had done in this case. Therefore, the High Court manifestly erred in law in exempting the deposit of 20% of the amount as a condition for suspension of the sentence. "*

9. Considering the language of Section 148 and considering the law laid down by the Supreme Court as referred supra, it is necessary to consider the present case in the light of the above observations. It is not in dispute that the complainant presented his complaint on 09/11/2022, however, it was registered on 28/11/2022 as Summary Criminal Case No.22047/2022 and it was decided on 08/05/2024. The appeal was preferred by the accused, as he was convicted by the Trial Court. The said appeal was preferred on 06/06/2024 along with application for suspension of sentence. The application for suspension of sentence was decided on 24/06/2025. The application was allowed, subject to payment of 20% amount i.e. Rs.3,50,000/- and it was directed to be deposited within 15 days in the Trial Court. The present writ petition was filed on 26/08/2025.

10. Section 148 of the Negotiable Instruments Act, is introduced by way of an amendment by Act 20 of 2018, (w.e.f. 01/09/2018). The object of bringing this provision in the statute book reads as under:

> *" The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a*

> *dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions."*

11. It seems from the aim and object of this amendment that injustice is caused to the payee of a dishonoured cheque because of delay tactics of unscrupulous drawers of dishonoured cheques as a result of easy filing of appeal and obtaining stay on proceedings, resultantly, the payee has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delay tactics compromise the sanctity of cheque transactions. Keeping in mind, the object with which Section 148 was introduced by the legislature, even the Supreme Court while interpreting Section 148 in the case of ***Surinder Singh Deswal (supra)***, has held that the use of word "may" in Section 148 has to be read as "shall". In the case of ***Jamboo Bhandari (supra)***, the Supreme Court to supplement the aforesaid view has held that 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. It is further held that, when the prayer under Section 389 of Cr.P.C. is made for suspension of sentence, 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 condition of deposit of 20% of compensation amount and when the Appellate Court concludes that it is an exceptional case, reasons should be specifically recorded.

12. From perusal of the above position of law, it is crystal clear that exceptional case has to be made out for waiving of deposit of 20% of amount. So far as, the present case is concerned, it is submitted that the petitioner No.2 is not in a financial condition to deposit 20% amount as was directed by the Appellate Court. Being an old age person he is suffering from several disease. So as to substantiate the same, he relies on medical certificates, which are placed on record. He further submits that the above are the exceptional circumstances, wherein, the condition of amount of deposit of 20% is required to be quashed and set aside.

13. It is pertinent to note that Section 148 of the Negotiable Instruments Act, strikes a balance between the drawer and the drawee as proviso to Section 148(3) states that if the appellant is acquitted, the Court shall direct the complainant to repay the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India. Therefore, the legislature has safeguarded the interest of both the parties. The section empowers the Appellate Court to order payments pending appeal against conviction. It can be ordered either on the application of the original complainant or either at the time of suspension of sentence on an application of the accused. The very object of this Section as stated supra is to avoid delay tactics of unscrupulous drawers, which compromises the sanctity of cheque transactions. Under such circumstances, if the case of the petitioner No.2 is considered, no exceptional circumstances are put forth so as to warrant interference.

14. Therefore, in view of the above discussion, the learned Appellate Court has exercised its discretion, so far as the deposit of 20% of compensation amount is concerned. The grounds raised by the petitioners, can be considered at the time of deciding the appeal, however, in my opinion, there is no infirmity or error in the impugned order. Further, it is to be noted that since November, 2022, the complainant is fighting the litigation, the accused appeared and contested the case, however, suffered conviction. Under such circumstances, a right was created in favour of the complainant, and therefore, in order to balance the rights and further to dissuade the appellant to delay the appeal, the impugned order is correctly passed. The judgment of the Trial Court is delivered in favour of the complainant, and if he is not able to draw the fruits, it would amount to causing injustice to the complainant and the very object of Section 148 would be frustrated. It is further to be noted that the impugned order was passed on 24/06/2025 by directing the accused to deposit Rs.3,50,000/- within 15 days, however, the petitioner No.2 has not yet deposited the said amount, though under protest it ought to have been deposited in order to show the bonafides. I am further fortified by the latest order of the Supreme Court in ***M/s R A Santana Marketing Services (supra).*** Therefore, considering the above facts and circumstances of the case, no error can be noted in the well reasoned order of the Appellate Court. Hence, Criminal Writ Petition is **dismissed**.

[M. M. NERLIKAR, J]