



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-10526-2025

Date of Decision: 24.02.2025

Ramandeep Singh

. . . . Petitioner(s)

Vs.

Manjit Singh and another

. . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rhythem Bajaj, Advocate for the petitioner.

SANJAY VASHISTH, J.

1. Question, arising before this Court is; whether at the time of suspending the sentence in the appeal against conviction under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act of 1881'), filed by the convict, payment of 20% of the compensation amount, as ordered by learned trial Court, is required to be mandatorily directed in mechanical manner for its payment by the appellant by virtue of Section 148 of the Act of 1881.

Another aspect, requiring its decision is whether the 20% of the compensation amount can be waived off or reduced by the Appellate Court by examining the totality of the circumstances, which would be emerging from the facts of the appeal pending before it and varies from case to case.

2. In the instant petition, petitioner, has been convicted by learned Trial Court in the complaint filed by respondent-Manjit Singh (complainant herein), under Section 138 of the Act of 1881, on account of bouncing of a cheque bearing



No.026826 dated 09.08.2019 amounting to Rs.8,53,000/- (Rupees eight lacs fifty three thousand only).

Learned Trial Court vide its order dated 07.09.2024 awarded the substantive sentence of a period of two years rigorous imprisonment. Apart this, learned trial Court ordered to pay the compensation equivalent to the cheque amount and in default of payment, to further undergo simple imprisonment for a period of three months.

3. In the appeal filed by the petitioner, learned Appellate Court while exercising its power under Section 430 of BNSS (389 Cr.P.C.), granted bail to the petitioner by suspending the order of sentence and also directed to pay 20% of the amount of awarded compensation to the respondent/complainant, to be deposited in the shape of FDR. For reference impugned order dated 10.10.2024 is reproduced herebelow:

“Present :- Appellant on bail with counsel Sh. A.K. Charaya, Advocate

Appeal has been received by way of entrustment. Heard. There are considerable arguable points in this appeal. Hence, the same is admitted for hearing. It be registered.

Along-with the appeal, appellant has also filed an application for suspension of sentence and for his release on bail. Heard. During the course of trial before the learned Lower court, the appellant was on bail. The lower court record is yet to be summoned and therefore, disposal of appeal shall take considerable period of time. No useful purpose would be served by detaining the appellant in custody for an indefinite period. Therefore, the application is allowed and sentence order awarded to the appellant by the learned trial court is suspended and appellant is ordered to be released on bail on his furnishing bonds in the sum of Rs. 50,000/- with one surety of the like amount subject to the following conditions:-

1. He will furnish the bail bonds and surety bonds to the satisfaction of the trial court/Duty Magistrate within 30 days from today.



2. *He will deposit 20% of the compensation amount as awarded by the Trial Court in favour of the appellant within 90 days from passing of this order before the Trial Court, in the shape of FDR which may be prepared in his own name in any nationalized bank and original FDR be submitted before the trial Court which shall write to the bank concerned, not to release the amount of FDR without orders of Court. In case said 20% of compensation amount is not deposited by the appellant within the stipulated period, the bail granted to the appellant and his suspension of sentence shall automatically stands cancelled and learned Trial Court shall be at liberty to proceed against the applicant/appellant in accordance with the law. Bail bonds after attestation be sent to this court for record.*

Notice to respondent be issued and record of learned trial Court be summoned for 21.01.2025.

Date of order :10.10.2024

*(Jaapinder Singh)
Addl. Sessions Judge
Fazilka/UID No.PB0235"*

4. The aforementioned direction in part i.e. ordering for payment of 20% of the compensation awarded by learned trial Court, within 90 days while exercising the power under Section 148 of the Act of 1881 by learned Appellate Court (where appeal filed by the petitioner/convict is pending) has been impugned in this petition filed before this Court.

Before proceeding further, provision of Section 430 of Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS, 2023'), which has substituted Section 389 of Cr.P.C., and Section 148 of the Act of 1881 are reproduced herebelow:-

"430. Suspension of sentence pending appeal; release of appellant on bail. 1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond or bail bond:

Provided that the Appellate Court shall, before releasing on his own bond or bail bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a



term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years; or

(ii) where the offence of which such person has been convicted is a bailable one,

and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

SECTION 148 OF NEGOTIABLE INSTRUMENTS ACT, 1881

“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.

(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.”

5. Learned counsel for the petitioner submits that undoubtedly, Appellate

Court is empowered under Section 148 of the Act of 1881 to direct the payment of



20% of the compensation amount. However, by virtue of judgment of Hon'ble Apex Court in *Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. and others, 2024(1) SCC (Cri) 90*, as also in the case of *Muskan Enterprises and another v. The State of Punjab and another, 2024 SCC Online SC 4107 : Law Finder Doc Id #2680202*', issuance of such a direction is directory in nature and not mandatory. In other words, the Appellate Court has to apply its judicious mind and thereupon exercising its discretionary standard, can reduce or even entirely waive off the 20% of the amount of the awarded compensation. Undoubtedly, for concluding so, Appellate Court would be required to examine the circumstances, financial capability and the mitigating circumstances of the accused i.e. whether such a direction would create unwarranted hardship for the appellant and deprive him of considering his plea in the appeal on merits.

6. Learned counsel for the petitioner further argues that the impugned order dated 10.10.2024 (P-2) passed by the learned Appellate Court is in violation of the law settled by Hon'ble Supreme Court in *Jamboo Bhandari's case (supra)*, wherein, it has been held that while considering the prayer under Section 389 of the Cr.P.C. of an appellant who has been convicted for offence under Section 138 of the Act, it is always open for the Appellate Court to consider, whether the appeal before it, is an exceptional case or not, which warrants grant of suspension of sentence, but without imposing the condition to deposit 20% of the fine/compensation amount. And, 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, which is missing in the present case. It is submitted that learned Court below has not appreciated the facts of the case and other circumstances of the



petitioner, as per mandate of the Hon'ble Supreme Court in *Jamboo Bhandari's case (supra)*.

7. After hearing learned counsel for the petitioner and perusing the record, it is apparent that sentence of the petitioner was suspended by learned Appellate Court subject to the deposit of 20% of the compensation amount awarded by learned trial Court. However, petitioner did not comply with the same.

This Court is of the view that dispute raised through the present petition can be decided *in limine* and without calling the other side here, because the way this Court intends to dispose of the present petition, no prejudice would be suffered by the complainant qua his rights.

8. This Court finds that the plea of the petitioner is that impugned orders dated 10.10.2024(P-2) passed by learned Additional Sessions Judge, Fazilka is without adhering to the directions issued by the Hon'ble Apex Court in *Jamboo Bhandari's case (supra)*, as also in *Muskan Enterprises case (supra)*.

9. The Hon'ble Apex Court in *Jamboo Bahndari's case (Supra)* and *Muskan Enterprises case (Supra)* has laid down certain parameters while considering Section 148 of the Act for the purpose of interpretation. It has been held that the object of Section 148 of the Act is not mandatorily to be followed rather, it is directive and the direction to pay or deposit 20% of the compensation amount, which is maximum, is to be passed by the concerned Court after examining the facts and circumstances of the case before it.

10. In *Jamboo Bhandari's case (supra)*, the view taken by the Hon'ble Apex Court in an earlier case, i.e. *Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC (Cri) 461*', has also been discussed, wherein, the object and reason



of the amendment in Section 148 of the Act was discussed. The observations made in para Nos. 5 to 12 of the judgment in Jamboo Bhandari's case (supra) are reproduced here-below:

“5. The paragraph '8' of the decision of this Court in the case of *Surinder Singh Deswal Alias Colonel S.S. Deswal and Others* (2019) 11 SCC 341 reads thus: -

"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 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, 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., 1973 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 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.

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., 1973 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.*

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.*

9. *We disagree with the above submission. When an accused applies under section 389 of the Cr.P.C., 1973 for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is*



sought by the appellants, the Court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.

11. The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court .

12. In these circumstances, we set aside the impugned orders of the High Court and restore the revision petitions filed by the appellants before the High Court . We direct the parties to appear before the roster Bench of the High Court on 09.10.2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court , it will not be necessary for the High Court to issue a notice of the date fixed for hearing. The High Court , after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the Revision Petitions in the light of what we have observed in this judgment. Till the disposal of the restored Revision Petitions, the interim order passed by this Court ordering suspension of sentence will continue to operate.”

11. Again, in **Muskan Enterprises case (supra)**, Hon’ble the Apex Court has noticed certain additional parameters, which are required to be looked into in such like cases, which reads thus:

“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



mis-appreciating 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.

28. *In such view of the matter and for the foregoing reasons, we are unhesitatingly of the view that the impugned order of the High Court declining to entertain the subsequent petition under Section 482, Cr. PC of the appellants is unsustainable in law. However, we do not consider the need to remit the matter to the High Court for consideration of the subsequent petition under Section 482, Cr. PC; instead, in our view, justice would be sufficiently served if the Sessions Court re-examines the issue of deposit being required to be made by the appellants in the light of the law laid down in *Jambo Bhandari* (supra) and the observations made hereinabove.*



29. Consequently, the impugned order of the High Court dated 18th May, 2024 and the Sessions Court's order dated 17th October, 2022, stand set aside. The matter is remitted to the Sessions Court to re-examine the issue of ordering deposit. Whether sufficient ground has been made out by the appellants to persuade the Sessions Court not to order any deposit is left entirely to its discretion and satisfaction. We do not express any opinion on the plea that the appellants have sought to advance before us, lest any party seeks to derive any advantage. All points are left open."

12. As per *Jamboo Bhandari's case (supra)*, in the appeal filed by the convict, after being convicted under Section 138 of NI Act, it is imperative for the Appellate Court to examine the circumstances in totality and if a *prima facie* view is made out that the basis of conviction made by the trial Court, can be disturbed or set-aside also, by recording its reasons, can conclude that the case (appeal) in hand is exceptional one. Therefore, it can refrain itself from imposing any such condition of deposit of 20% of the compensation amount, while dealing with the application for suspension of sentence.

In *Muskan Enterprises case (supra)*, in paragraph No.27, certain instances have been speculated in relation to the findings of conviction recorded by the trial Court, and thereupon, endorsed the view already taken in *Jamboo Bhandari's case (supra)*.

13. This Court has already considered the similar plea in *CRM-M-3861-2025*, titled as, '*M/s Devgan Rice and General Mills v. M/s Jasbir Bhullar Trading Company and another*' (D.O.D. : 28.01.2025), wherein, while setting aside the non-speaking order, which was passed, without noticing the directions issues by Hon'ble the Apex Court in *Jamboo Bhandari's case (supra)* and *Muskan Enterprises case (supra)*, by issuing direction to re-decide the issue in accordance with law, laid down by Hon'ble the Apex Court. For reference, the observations



made in paragraph No.9 in **M/s Devgan Rice and General Mills's case supra**, are reproduced here-under:-

“9. While dealing with Section 148 of the Act of 1881, in **Jamboo Bhandari's case (supra)** certain circumstances which may be there in a particular appeal have been anticipated and thereupon observed that:

- (i) It would not be justified for Appellate Court to mandatorily impose a condition of deposit of 20% of compensation amount if it records its satisfaction that imposition of such a condition upon the appellant may deprive a genuine litigant from right of appeal. Thus, by recording it as an exceptional reason condition of deposit of 20% of compensation amount can be waived off or reduced;
- (ii) Irrespective of the plea taken by the appellant/convict of considering his case of exceptional circumstances, it would be obligatory for the Appellate Court while dealing with the plea of suspension of sentence to examine if the case before it actually falls within the exceptions or not;'
- (iii) Deposit of minimum 20% amount under Section 148 of the Act of 1881 is thus not mandatorily or an absolute rule, unless same is examined thoroughly if the case can be accommodated within the exceptions.

In Muskaan's case (supra) the concept of deposit of 20% of the compensation amount mandatorily, has been diluted more by observing that word 'may' is to be read as 'may' and word 'shall' is to be read as 'shall' and same is not required to be tinkered with, while reading Section 148 of the Act of 1881.”

14. After examining the impugned order dated 10.10.2024(P-2) and in view of the judicial precedents settled by Hon'ble Apex Court in **Jamboo Bhandari's case (supra)** and **Muskan Enterprises' case (supra)**, without commenting anything on the merits of the case, the present petition is disposed of and learned lower Court (Appellate Court) is directed to re-examine the case in view of law laid down by the Hon'ble Apex Court in **Jamboo Bhandari's case (supra)** and **Muskan Enterprises' case (supra)** and after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances, decide afresh whether it is an appropriate case that warrants waiver of the requirement of deposit of 20% of the compensation awarded by learned trial Court.



15. The directions given in the order dated 10.10.2024(P-2) by learned Appellate Court to the extent of depositing 20% of compensation, are set aside and it is also clarified that the order of suspension of sentence would not be disturbed in any manner and same would be subject to the observations, which are yet to be made by the Appellate Court while dealing with the provisions of Section 148 of the Act.

With the aforementioned observations, **present petition stands disposed of.**

Let copy of this order be sent to the Lower court, for information and compliance.

24.02.2025

Rashmi/J.Ram

**(SANJAY VASHISTH)
JUDGE**

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No