IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2025:PHHC:150012

129 **CRM-M-54829-2025**

Date of decision: 31.10.2025

M/s Shivika Infrastructure Engineers and Contractors

....Petitioner(s)

V/s

Harpreet Singh

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. D.S. Matya, Advocate and
Ms. Palak Goel, Advocate for the petitioner.

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SUMEET GOEL, J. (Oral)

1. The present petition under Section 528 of the BNSS, 2023 has been preferred by the petitioner impugning the order dated 22.08.2025 (Annexure P-3) passed by the learned Additional Sessions Judge, Gurugram, to the extent, that the execution of sentence and order appealed against has been suspended *qua* petitioner (herein) subject to depositing of 20% of the amount of compensation. The relevant portion of the impugned order reads thus:

> *"1. Appellant-convict Sumit Sharma in person being represented by Sh. Sanjeet Vats, Advocate. The appellant has assailed the judgment of conviction dated 25.07.2025 and order of sentence dated 31.07.2025 vide which he has been convicted for commission of offence punishable under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of 4 months. Besides this, he has also been asked to pay Rs. 19,00,0000/ - to the complainant within a period of 2 months from the date of passing of judgment as compensation. Be that as it may be, since there are contentious issues of facts and law involved in this appeal which requires re-appreciation of entire matter, the appeal is admitted for hearing on merits.*
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> *2. Notice of the appeal be issued to the respondent-complainant for 29.10.2025, on filing of copies, etc.*

3. Heard on application for suspension of sentence during pendency of appeal filed by appellant under Section 430 BNSS. Admittedly, the appellantconvict was sentenced to undergo simple imprisonment for a period of 4 months . Besides this, he has also been asked to pay Rs. 19,00,0000/ - to the complainant within a period of 2 months from the date of passing of judgment as compensation. As such, the issue comes whether the sentence can be suspended even if the appellant is not ready to pay the aforesaid amount. The question was directly considered by Hon'ble Apex Court in case titled as "Dalip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. & Anr." 2007(2) RCR (Criminal) 636, wherein the question was as to what is the true interpretation of Section 357 Cr.P.C. vis-a-vis the provisions of Negotiable Instruments Act, including power of Trial Court to impose compensation and sentence and the Hon'ble Apex Court held that when an appeal is filed against conviction besides sentence of imprisonment, the Appellate Court can stay payment of amount subject to some conditions including the condition of depositing of part of compensation which must be reasonable. In case title "Surender Singh Deshwal @ Colonel S.S.Deshwal Vs. Virender Gandhi" Law Finder I.D 1482558, it was held by the Hon'ble Supreme Court of India that power of the Appellate Court directing the appellant/accused to deposit the sum which is minimum 20% of the compensation awarded by the trial court is mandatory in nature. Similarly in case titled "Surender Singh Deshwal @ Colonel S.S.Deshwal Vs. Virender Gandhi" Law Finder I.D 1661882 Criminal appeal no.1936-1963 of 2019, it was held by Hon'ble Supreme Court of India that where the appellate court suspends the sentence subject to deposit of certain percentage of compensation amount and when the condition of suspension of sentence is not complied with, the appellate court is right in taking the view that the order of suspension of sentence would be deemed to be vacated. Even in caste title "Jamboo Bhandari Vs. M.P State Industrial Development Corporation ltd. and others" law finder ID 2313888, it was held by Hon'ble Supreme Court of India that by adopting purposive interpretation of section 148 of Negotiable Instrument Act, the appellate court would be justified in imposing the condition of deposit but in circumstances where appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing a condition with amount to deprivation of the right of appeal exception can be made out for the reasons specifically recorded. This court has considered the facts of the case and submissions of appellant in the light of the afore stated proposition of law.

4. It comes out that Trial Court has directed the appellant to pay compensation of Rs. 19,00,0000/- to complainant as compensation. There *is nothing on record to prima-facie convince this court that imposing the condition as afore-stated would be unjust under the facts of the present case. As such, while holding the right of appellant-convict to file an appeal, the application for suspension of sentence during pendency of appeal is hereby allowed and the impugned order of sentence along with order to pay compensation Rs. 19,00,000/- under Section 357(3) Cr.P.C. is stayed and suspended till pendency of appeal subject to condition of furnishing of bail bonds in the sum of Rs. 25 ,000/- with one surety in the like amount to the satisfaction of this Court and subject to further condition that appellant shall deposit 20% of the total amount of compensation as imposed by ld. Trial court on or before next date of hearing with this Court or the Learned Duty Magistrate, as the case may be. In case, the amount is not deposited as directed on or before the date fixed, the order of suspension of sentence shall automatically stand withdrawn warranting the appellant-convict to surrender before learned Trial Court by the end of working day of 29.10.2025 and to undergo the sentence awarded, subject to disposal of appeal on merit.*

5. Requisite bonds furnished which are accepted and attested. Requisite intimation be sent to the concerned authority regarding furnishing of the surety for the accused to facilitate him to incorporatean entry regarding furnishing of the surety in his record in pursuance of the order dated 01.06.2018 passed by the Hon'ble High Court in Civil Writ Petition No. 4898 of 2018. A copy of this order be sent to the learned Trial Court/Duty Magistrate for information and necessary action in accordance with law. Notice of the appeal be issued to the respondent-complainant for 29.10.2025, on filing of copies, etc."

2. Learned counsel for the petitioner has argued that the petitioner is not in a position to deposit the said amount of 20% of the compensation amount as awarded by the trial Court on account of financial difficulty. Learned counsel has further argued that due and requisite opportunity was not afforded to the petitioner before passing of the impugned order dated 22.08.2025 wherein condition for deposit of 20% of the amount of the compensation has been stipulated by the learned Sessions Court. Learned counsel has further iterated that imposition of such condition of deposit of 20% of the amount of compensation as awarded by the learned trial Magistrate would effectively amount to taking away the right of appeal of

the petitioner. Thus, it has been submitted that the impugned order be quashed, to the extent, that a condition of deposit of 20% of the amount of compensation as awarded by the trial Court, has been imposed.

3. I have heard learned counsel for the petitioner and perused the paper-book.

4. Section 148 of the Negotiable Instruments Act, introduced through the 2018 amendment, empowers appellate courts to mandate the deposit of at least 20% of the fine or compensation amount by the accused as a condition for hearing an appeal against a conviction in cheque dishonour cases under Section 138. This provision aims to address the prolonged litigation faced by complainants and mitigate delays in receiving compensation, ensuring a balance between the accused person's right to appeal and the complainant's right to speedy justice. The amount deposited can be released to the complainant, reflecting the legislative intent to provide timely relief and deter frivolous appeals.

At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors. 2023 (10) SCC 446;*** relevant whereof reads 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.*
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> *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.

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. 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."

5. The convict bears the onus of demonstrating exceptional circumstances to persuade the appellate court to waive the mandatory deposit of compensation under Section 148 of the Negotiable Instruments Act. Considering the legislative intent behind the provision, which seeks to expedite justice and alleviate the complainant's hardship due to prolonged litigation, it is generally appropriate for the appellate court to impose this condition when an appeal is filed against a conviction under Section 138. Such a requirement ensures that the complainant is not unjustly deprived of compensation while safeguarding the appellate process from frivolous or dilatory tactics. Under Section 148 of the Negotiable Instruments Act, the requirement to deposit the compensation amount as a condition for appeal is generally mandatory, emphasizing its status as a rule.

The Hon'ble Supreme Court in a judgment titled as ***Muskan Enterprises & Anr. Vs. The State of Punjab 2024 INSC 1046,*** has held thus:

> *"xxxxxxxxxxxxxxxxx. 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. xxxxxxxxxxxxxx."*

Ergo, the ratio decidendi of the judgments of the Hon'ble Supreme Court in cases of ***Jamboo Bhandari*** (supra) and ***Muskan Enterprises*** (supra) enunciates that the appellate Court holds the discretion to waive this condition only in exceptional circumstances. Such circumstances must be demonstrated through compelling and substantiated material provided by the appellant-convict. Absent such cogent material, it would be in appropriate for appellate Court to impose such condition. This approach ensures adherence to the legislative intent, discouraging frivolous appeals and protecting the interests of the complainant.

5.1. Applying the ratio decidendi of the judgments in the case of ***Jamboo Bhandari*** case (supra) and ***Muskan Enterprises*** (supra), no ground is made out to quash/modify the condition imposed vide the impugned order whereby the petitioner has been directed to deposit 20% of the amount of the compensation as awarded by the learned trial Magistrate. The ground pleaded by the petitioner that he is facing financial difficulty cannot be said to be a ground sufficient enough for carving out an exception from the mandate contained in Section 148 of the Negotiable Instruments Act, 1881. It also cannot be said, in the facts and circumstances of the present case, that imposition of the condition of deposit of 20% of the amount of compensation as awarded by the learned trial Magistrate can be said to be unjust or would amount to effectively taking away the right of appeal of petitioner. Thus, the impugned order does not suffer from any infirmity *nay* legal infirmity calling for any interference by this Court. Accordingly, the petition in hand is dismissed.

6. Pending application(s), if any, shall also stand disposed off.

7. Nothing said hereinabove shall be deemed to be an expression of opinion upon merits of the appeal pending before the learned Sessions Court.

(SUMEET GOEL)
JUDGE

October 31, 2025
Naveen

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No