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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 529/2025, CRL.M.A. 2581-2583/2025

UMA SAHRMA AND ANR

.....Petitioners

Through: Mr. Rahul Sharma, Advocate

versus

ARPIT MITTAL

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

28.01.2025

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1. The present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ assails order dated 16th December, 2024² passed by the ASJ, North District, Rohini Courts in CA No. 242/2024.³ The impugned order emanates from Complaint Case No. 26/2018 under Section 138 of the Negotiable Instruments Act, 1881⁴ wherein the Trial Court convicted and sentenced the Petitioners through orders dated 3rd July, 2024 and 29th October, 2024, respectively.

2. Through the impugned order, while admitting the appeal under Section 415 of the BNSS and issuing notice to the Respondent, the Appellate Court dismissed the application filed by the Petitioners seeking waiver of the pre-deposit of fine. At the same time, while suspending the

¹ "BNSS"

² "the impugned order"

³ titled *Uma Sharma & Anr. v. Arpit Mittal*.

⁴ "the NI Act"



sentence of the Petitioners, a condition was imposed for deposit of 25% of the compensation amount as awarded by the Trial Court in the form of FDR in the name of the Appellate Court within a period of 30 days from the date of the order. The operative portion of the impugned order reads as follows:

*“3. I have perused the record including the impugned judgment and order on sentence. Perusal of the record reveals that even though the notice u/s 251 Cr.PC was not framed against the appellants/accused persons, but the cross examination of complainant’s witness i.e. CWI was conducted on behalf of the appellants and the defence was also brought on record. As per Sec. 464 Cr.PC, no finding, sentence or order by any Court of competent jurisdiction shall be deemed invalid merely on the ground that no notice/charge was framed. Pleas regarding the poor health condition of appellant no. 1 and pendency of case before Debt. Recovery Tribunal, are not justified grounds for waiver of pre-deposit as mandated by law. Accordingly, in view of the discussions made herein above, **the present application stands dismissed.***

*4. An application u/s 430 BNSS for suspension of sentence awarded to the appellants by the Ld. Trial Court and grant of bail till disposal of the present appeal) has also been filed along with the present appeal, stating therein that the appellants have remained on bail during the course of trial. Arguable points have been raised in the appeal. Considering the facts and circumstances of the case, **the sentence awarded to the appellants i.e. Uma Sharma and Sanjay Sharma by the Ld. Trial Court vide order on sentence dated 29.10.2024, is suspended subject to deposit of 25% of the compensation amount as awarded by the Ld. Trial Court in the form of FDR in the name of this Court within a period of 30 days from today** and the appellants are granted bail till the final disposal of the present appeal on furnishing personal bond in the sum of Rs. 25,000/- each with one surety each in the like amount. The same are furnished and accepted.”*

3. Counsel for the Petitioner submits that two complaints bearing Complaint Case No. 26/2018 and Complaint Case No. 27/2018 for the offence under Section 138 of the NI Act had been filed in respect of dishonour of four cheques. In both the complaints, the Petitioners have been convicted by two separate orders passed the same Court. However, the appeal against the said orders were considered by different Appellate Courts.



It is further submitted that in an application filed for waiver of pre-deposit, in CA No. 28/2024, the Appellate Court directed the Petitioners to deposit 20% of the fine amount of the cheque as a condition for suspension of sentence. A copy of the said order is handed over across the Board and is taken on record.

4. The Court has considered the afore-noted contentions. In the opinion of the Court, the direction of the Appellate Court in CA No. 28/2024 cannot be the sole basis for interfering with the impugned order. The requirement of pre-deposit under Section 148 of the NI Act is a discretionary exercise by the Appellate Court, which is undertaken after assessing the facts and circumstances specific to each case. The mere existence of a different order in another appeal does not, by itself, justify intervention in the present matter.

5. At this juncture, counsel for the Petitioner seeks an extension to make the deposits, citing an inability to arrange the necessary funds within the stipulated time. In view of the above, it is directed that if the Petitioners make the deposit within a further period of 30 days from today, the suspension of sentence shall continue to remain in force, failing which, the suspension shall be deemed to have been revoked.

6. With the above directions, the present petition, along with pending applications, is disposed of.

SANJEEV NARULA, J

JANUARY 28, 2025/ab