

09.04.2026

Sl. no. 1-3

Ct. No. 42

P.M.

CRR 2532 OF 2025

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CRAN 5 of 2026

With

CRR 2533 of 2025

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CRAN 4 of 2026

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CRAN 5 of 2026

With

CRR 2534 of 2025

+

CRAN 4 of 2026

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CRAN 5 of 2026

M/s. Transmart Container Lines

- Vs -

The State of West Bengal & Anr..

Mr. Sabir Ahmed,

Mr. Shraman Sarkar

... for the petitioner

Mr. Debajyoti Deb,

Mr. Shyamal Mondal,

Mr. Somdyuti Parekh,

Mr. H. K. Jha

... for opposite party No. 2

1. Present petitions have been filed challenging the order dated 1st February, 2025 in all the petitions passed by learned Chief Judge, City Sessions Court, Calcutta in Criminal Appeal affirming the judgement and order of conviction passed by learned Metropolitan Magistrate, 14th Court, Calcutta whereby the petitioner was convicted under section 138 of the Negotiable Instruments Act and

sentencing the petitioner with simple imprisonment of six months in each of the case and further liable to pay a fine amount of Rs. 90 lakhs in CS 423095 of 2014, Rs. 45 lakhs in CS 423093 of 2014 and Rs. 30 lakhs in CS 423089 of 2014.

2. Aggrieved by this the petitioner filed an appeal before the learned Sessions Court challenging the order of conviction. Learned appellate court vide order dated 15th May, 2024 in the Criminal appeal 61 of 2024, 62 of 2024 and 63 of 2024 admitted the appellants subject to deposit of 20% of the fine amount before the learned Trial Court as security deposit respectively. However, the petitioner instead of depositing the amount with the learned Trial Court challenged the order of deposit before this Court in CRR No. 2820 of 2024, CRR No. 2821 of 2024 and CRR No. 2822 of 2024. The co-ordinate Bench of this court admitted the revision petition for hearing vide order dated 26th July, 2024 and passed an interim order staying the impugned order subject to deposit of 10% of the fine amount vide orders dated 26th July 2024. Admittedly this amount was not deposited.
3. Learned counsel for the petitioner states at bar that these petitions are still pending before this Court.

However, admittedly the interim order was not extended.

4. Learned appellate court taking cognizance of this fact dismissed the appeal filed by the petitioner for non-compliance of the court's order.
5. The petitioner aggrieved of this invoked the jurisdiction of this court. Learned counsel for the petitioner submits that though admittedly the petitioner has not deposited the amount, but first appeal is a statutory right of the petitioner and the same could not have been dismissed by the learned Sessions Court for the non-compliance of the order.
6. Learned counsel for the petitioner submits that the power of appellate court under Section 148 of the Negotiable Instruments Act is a discretionary power and cannot be made condition precedent for the hearing of the appeal.
7. Learned counsel has further submitted that in the statutory appeal the sentence should be suspended unless there are exceptional circumstances. Reliance has been placed on **Bhagwan Rama Shinde Gosai** – Vs – **State of Gujarat** (1999) 4 SCC 421. Learned counsel has further relied upon **Rajesh Sanei** – Vs – **Ritu Agarwal** CRR 3759 of 2024 and **Jamboo Bhandari** – Vs – **Madhya**

Pradesh State Industrial Development

Corporation Limited & Ors. (2023) 10 SCC 446.

8. Learned counsel submits that it was inter alia held in Jamboo Bhandari (supra) that if the appellate court considers that order regarding deposit of 20% is unjust as such an imposition of condition will amount of deprivation of the right of the appeal of the appellant, the court has the discretion vested in it.
9. Learned counsel, therefore, submits that the learned appellate court was not right in dismissing the appeals for non-deposit of amount. Learned counsel further submits that petitioner is not in a position to deposit this amount as he does not have any means. It has further been submitted that petitioner has a very good case and there are all likelihood that he may succeed in the case.
10. Learned counsel for the opposite party has vehemently opposed the submissions of learned counsel for the petitioner and has submitted that the petitioner has deliberately flouted the order of the deposit of amount passed by the learned appellate court as well as by this court.
11. Learned counsel further submitted that the tactics being adopted by the petitioner are delaying tactics.

It has further been submitted that the learned appellate court has passed the order for deposit of 20% amount after taking into account the entire facts and circumstances of this case.

12. The Negotiable Instruments Act was enacted by legislature in its wisdom with an intention to bring the credibility into the commercial transactions and to ensure that the cheque issued by the parties are duly honoured. It was necessarily felt that for a robust system there has to be transparency and bonafide in the commercial transactions. There are statutory conditions inserted in the law itself, on the basis of which only, the complaint under N.I. Act is maintainable. Section 143A and section 148 were also inserted by the legislature in order to ensure that the complainant, who has not been able to receive the due, should get some relief till the final conclusion of the case.

13. In **Surinder Singh Deswal & Ors. – Vs – Virender Gandhi** (2019) 11 SCC 341 the Apex Court inter alia held as under :

“7.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of

Section 138 of the N.I. Act was being frustrated. Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under section 138 of the N.I. Act, is conferred with the power to direct the convicted appellant-accused to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the appellant-accused has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 01.09.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore, the decisions of this court in Garikapati Veeraya and Videocon International Ltd, relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that

Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned First appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial court considering Section 148 of the N.I. Act, as amended.”

- 14.** Perusal of the above said observation makes it clear that the Apex Court taking note of the delaying tactics by taking easy resolve to the filing of appeal after the conviction.
- 15.** In regard to the mandatory form of Section 148 the Apex Court inter alia held that the amended Section 148 of the N.I. 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. It was further inter alia held that if an amended Section of N.I. Act as proposed to be interpreted it would serve the objects of reason of Section 138 of the N.I. Act as well as Section 148 of the N.I. Act. It is also pertinent to mention here that the Apex Court took note of the fact that enactment of the Negotiable Instruments was to speedy disposal of cases relating to the offence of dishonour of cheques.

16. In **Jamboo Bhandari** – Vs. – **Madhya Pradesh State Industrial Development Corporation Limited & Ors.** (2023) 10 SCC 446 the Apex Court while taking note of the **Surinder Singh Deswal** (supra) inter alia held that it would be wrong to say that this right does not accommodate any exception.
17. In **Muskan Enterprise & Anr.** Vs. **State of Punjab & Anr.** (2024) 12 SCR 1273 the Apex Court considering the challenge to the requirement of deposit of 20% of the compensation of the pending appeal inter alia held that ;
 “ 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 or 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 to 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, levels 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.”

- 18.** Thus reading of the judgements as discussed about makes it clear that generally the appellate court may

direct the deposit of 20% of the amount at the time of the admission of the appeal, but still there is a discretion with the appellate court to consider accommodation in the exceptional circumstances taking note of the peculiar circumstances or hardship of the petitioner.

- 19.** In background of the law which has been discussed above let us advert to the factual situation of the present case. The cheques in amount were involving huge amount. The complaints were filed by the complainant/opposite party in the year 2014. The conviction order was passed in February 2024. The same was challenged before the learned Sessions Court by way of appeal in the year 2024. The same is situation till date when we are in April, 2026. Not even a single penny has been given by the petitioner to the opposite party/complainant. This court cannot be oblivious of this fact.
- 20.** However, this court is fully conscious of the fact that first appeal is a matter of statutory right and that has to be given to the petitioner. Whether the petitioner has any exceptional circumstances has to be seen by the learned appellate court.
- 21.** The Court considers that dismissing the appeal for not depositing of the amount without affording an

opportunity of being heard, may not sustain in the eyes of law. Therefore, the order dated 1st February, 2025 is liable to be set aside.

- 22.** Further the petitioner again may not be allowed to roam freely. The order of the learned Judicial Magistrate stands today as it is. The petitioner has not complied with the order of the learned Metropolitan Magistrate passed in all the three cases within the time limit as given in the order of sentence dated 12th February, 2024.
- 23.** Hence the petitioner is directed to surrender before the learned Metropolitan Magistrate, 14th Court, Calcutta on or before 27th April, 2026.
- 24.** In all the three cases to undergo the sentence as awarded vide order dated 12th February, 2024. The appeal No. 61 of 2024, 62 of 2024 and 63 of 2024 are remitted back to the learned Chief Judge, City Sessions Court, Calcutta to consider in accordance with law.
- 25.** Petitioner shall be at liberty to raise the ground of exceptional circumstances before the learned Chief Judge, City Sessions Court. The learned Chief Judge, shall consider the same independently of the order passed by this court after hearing both the parties.

- 26.** These petitions and all connected applications are disposed of.
27. Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all usual requisite formalities.

(Dinesh Kumar Sharma, J.)