

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1477 OF 2025

Advait Housing And Infra Pvt Ltd & Anr ...Petitioners
Versus
State of Maharashtra & Anr ...Respondents

Mr. Dilip Shukla, a/w Faizan Shaikh, Steve Fernandes,
Kashish Singhi and Sujata Bule, for the Petitioners.
Mr. D. J. Haldankar, APP for the State – Respondent No.1.

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CORAM: N. J. JAMADAR, J.
DATED: 13th FEBRUARY, 2026

Oral Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 15th June, 2024, whereby while directing the suspension of sentence imposed on the petitioners by the learned Metropolitan Magistrate, upon conviction of the petitioners for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ("the NI Act, 1881"), the learned Sessions Judge directed the petitioners to deposit 20% of the amount of compensation awarded by the learned Magistrate, under Section 148 of the NI Act, 1881.
3. Mr. Shukla, the learned Counsel for the petitioners, submitted that the petitioners had, thereafter, filed an

application before the learned Sessions Judge seeking modification of the said order. However, the learned Sessions Judge has declined to entertain the said application.

4. By an order dated 3rd April, 2025 notice was directed to be issued to respondent No.2. The petitioners have filed an affidavit of service of notice upon respondent No.2 – complainant.

5. None appeared for respondent No.2 – complainant.

6. From the perusal of the impugned order, it becomes evident that the learned Additional Sessions Judge has not ascribed any reason as to why deposit of 20% of the amount of compensation could not waived or the lesser amount could not be directed to be deposited by the appellants. The learned Sessions Judge has simply recorded that having considered the impugned judgment and order and submissions made on behalf of the appellants, he was persuaded to pass the impugned order.

7. In the case of *Surinder Singh Deswal alias Colonel S. S. Deswal and ors. vs. Virender Gandhi*¹, the Supreme Court, expounded the objective and the import of the provisions. The Supreme Court emphasised that the provisions of Section 148 of

¹ (2019) 11 SCC 341.

the NI Act, 1881 were required to be interpreted in a purposive manner so as to advance the object of the Act. The observations of the Supreme Court in paragraph 8 read 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 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 Cr.P.C. 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, 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 transaction, Parliament has thought it fit to amend Section 148 of 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."

(emphasis supplied)

8. In the case of *Jamboo Bhandari vs. Madhya Pradesh State Industrial Development Corporation Limited and Others*², the Supreme Court expounded that under Section 148(1) of the NI Act, 1881, discretion is vested in the Appellate Court whether or not to direct the accused to make the deposit of 20% of the amount of fine or compensation awarded by the trial Court. It was enunciated that it was 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. Explaining the ratio of the decision of *Surinder Singh Deswal* (supra), the Supreme Court enunciated the law 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 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.”

(emphasis supplied)

9. In the case at hand, this Court finds that in paragraph 28 of the judgment, the learned Metropolitan Magistrate has recorded following reasons for not imposing the sentence of imprisonment upon the petitioners – accused. Those observations read as under:

“28] Heard both sides and gone through record. It appears that, out of 15 lacs, an amount of Rs. 32 Lacs has already been repaid by the accused. It also come on record that, accused had deposited an amount of Rs. 25 lacs with Daulatrao Housing Co. Operative society. It also appears that, MOU was not officially cancelled. Considering all these acts, it becomes clear that, due to some unavoidable circumstances MOU was not acted upon. In fact, accused also could not take benefit from the said MOU. Therefore, I do not find this case to sent the accused behind the bar. Purpose will be served by imposing fine only.

10. In the light of the aforesaid observations, in the view of this Court, the learned Additional Sessions Judge ought to have examined whether the direction for deposit of 20% of the amount of compensation was warranted, whether an exceptional case to waive off the condition to deposit the amount was made out or a lesser amount could be directed to be deposited by the petitioners – appellants.

11. As the impugned order is virtually sans reasons, this Court considers it appropriate to quash and set aside the

impugned order and remit the matter back to the learned Additional Sessions Judge for a fresh decision on the aspect of imposition of condition to deposit the amount under Section 148 of the NI Act, 1881, after providing an opportunity of hearing to the parties.

12. The petition, thus, stands allowed.

13. The impugned order dated 15th June, 2024 to the extent of direction for deposit of 20% of the amount of compensation stands quashed and set aside.

14. The learned Sessions Judge, seized with Appeal No.111 of 2024, is requested to pass a fresh order under Section 148 of the NI Act, 1881 after providing an opportunity of hearing to the parties.

15. The petition stands disposed.

[N. J. JAMADAR, J.]