APHC010305732026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3504]
(Special Original Jurisdiction)

WEDNESDAY, THE 4th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION NO: 4840/2026

Between:

1. KANDRA YASWANTH KUMAR, S/O SAMBASIVA RAOAGED ABOUT 38 YEARS, BUSINESS, D. NO. 7-2-42BHAVANAM VARI STREET, GANGANAMMA PETA,TENALI, GUNTUR DISTRICT.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF ANDHRA PRADESHAT AMARAVATI.
2. DASARI VENKATA RAMESH, S/O KOTESWARA RAO (LATE) AGED ABOUT 47 YEARS, D.NO. 12-2-30DANTUVARI STREET, KAKINADA.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court pleased to call for records in CrI. M.P. No. 195 /2026 in CrI. Appeal No. 144/2026 and quash the operation of the order i.e., imposing condition of depositing 20% of the fine amount within a period of 30 days

IA NO: 1 OF 2026

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to dispense with filing of Certified Copies of CrI.

M.P. No. 195 of 2026 in CrI. Appeal No. 144 /2026 on the file of III Additional District & Sessions Judge; Kakinada East Godavari

IA NO: 2 OF 2026

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to suspend the operation of the order in CrI.MP. No. 195 72026 in CrI. Appeal No, 144 /2026 on the file of III Additional District & Sessions Judge: Kakinada East Godavari dt. 22-04-2026 to the extent of directing the petitioner to deposit 20% of the compensation amount and the respondent permitted to withdraw is same before Trial Court within a period of 30 days

Counsel for the Petitioner/accused:

1. KARUPOLU NARASIMHA RAO

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION NO: 4840 of 2026

ORDER:-

Instant Criminal Petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, corresponding to Section 482 of Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner herein (Accused), seeking to set-aside the Order dated 22.04.2026 in Crl.M.P.No.195 of 2026 in Crl.A.No.144 of 2026 passed by the learned III Additional District & Sessions Judge, Kakinada, East Godavari District.

2. Heard learned counsel for the petitioner and learned Assistant Public Prosecutor representing the State and perused the entire material available on record.

3. Learned counsel for the petitioner asserts that learned Sessions Judge who is adjudicating an Appeal against the conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 passed the impugned Order dated 22.04.2026 in Crl.M.P.No.195 of 2026 in Crl.A.No.144 of 2026 under Section 389(1) Cr.P.C., *parimateria* to Section 430(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023, whereunder, directed the petitioner to deposit 20% of compensation amount ordered by learned Trial Judge, within a period of two (02) months from the date of order, while suspending the sentence of imprisonment awarded by the learned Magistrate. He further states that the order of the 1st Appellate Court to the

extent of imposing a condition to deposit 20% of the compensation amount, without arriving at any specific reason, is not legal and valid and also not in accordance with ***Jamboo Bhandari v. MP State Industrial Development Corporation Ltd***'s case.

4. Learned Assistant Public Prosecutor appearing on behalf of respondent No.1-State submits that the 1st Appellate Court has power to order the appellant to deposit such sum, which shall be a minimum of 20% of the fine or compensation amount awarded by trial Court in an Appeal against the conviction under Section 138 of Negotiable Instruments Act, 1881.

5. Now the moot question involved in the *lis* is whether the order under challenge is legally sustainable or not?

6. For better understanding, Section 148 of the Negotiable Instruments Act is delineated as under:

> ***Section 148: Power of Appellate Court to order payment pending appeal against conviction:***
>
> *1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 percent 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.*

Emphasis supplied

7. Section 148 of the Negotiable Instruments Act empowers the Appellate Court to direct a person convicted under Section 138 of the Negotiable Instruments Act, 1881 to deposit 20% of the fine or compensation awarded by the trial Court, while the Appeal is pending. The main purpose of this provision is to protect the Complainant from unnecessary delay and to discourage Appeals filed only to postpone payment.

8. For better understanding, Section 430 of Bharatiya Nagarik Suraksha Sanhita, 2023, corresponding to section 389 Cr.P.C. is extracted hereunder:

"Section 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."

Emphasis supplied

9. It is pertinent to note that Section 148 of the Negotiable Instruments Act, 1881 and Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 operate in distinct and separate fields. Likewise, Sections 415 and 430 of the BNSS, 2023, corresponding to Sections 374 and 389 of the Cr.P.C., are also

distinct provisions governing different aspects of criminal appeals. The Negotiable Instruments Act does not contain any independent or self-contained provision specifically governing the filing and hearing of appeals or the suspension of sentence pending appeal. As such, in the absence of any special or contrary provision under the N.I. Act, the general provisions contained in Sections 415 and 430 of the BNSS are applicable to proceedings arising under the N.I. Act too.

10. In fact, Hon'ble Supreme Court in case of ***Surinder Singh Deswal*** @ ***Colonel S.S. Deswal and others***[1], explained that it was made to ensure that the complainant receives the cheque amount without any unnecessary delay, maintain the reliability of cheque transactions, and to prevent accused persons from filing appeals only to postpone payment. Therefore, it is held that the Appellate Court should normally direct the convicted accused to deposit at least 20% of the fine or compensation awarded by the trial court, unless there are special reasons for not requiring such a deposit.

11. Another dictum in respect of the issue in focus, is ***Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Limited and Others***[2], wherein Hon'ble Supreme Court, referring para in the case of ***Surinder Singh Deswal'***s case(supra) held as under:

[1]2019 (11) SCC 341
[2](2023) 10 SCC 446

"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, the 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, an exception can be made for the reasons specifically recorded.

7. Therefore, when the Appellate Court considers the prayer under Section 389 of 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."

12. By taking note of the statutory realm and Apex Court's interpretation and also the object and intendment of fiscal enactment, and also considering the language employed in the "Special Enactment" (N.I Act) and it's legislative intent more particularly the use of word "may", the Apex Court held in its subsequent succession, ***Rakesh Ranjan Shrivasthava v. State of Jharkhand and others***[3] held and summarized in the following guidelines:

27. Subject to what is held earlier, the main conclusions can be summarized as follows:

27.1. The exercise of power under sub-section (1) of Section 143-A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall".

27.2. While deciding the prayer made under Section 143-A, the court must record brief reasons indicating consideration of all relevant factors.

27.3. The broad parameters for exercising the discretion under Section 143-A are as follows:

27.3.1. The court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

[3](2024) 4 SCC 419

27.3.2. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

27.3.3. If the defence of the accused is found to be prima facie plausible, the court may exercise discretion in refusing to grant interim compensation.

27.3.4. If the court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

27.3.5. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

Thus, the Hon'ble Supreme Court of India in ***Rakesh Ranjan Shrivasthava's*** case (Supra) held that grant of interim compensation under Section 143A of the Negotiable Instruments Act is discretionary and cannot be made as a matter of routine. Before passing such an order, the Court must consider the facts of the case, the defence raised by the petitioner/accused and other relevant circumstances, and must give reasons for its decision.

13. In this context, it is relevant to note that the importance of a reasoned order is derived not only from its purpose of demonstrating to the citizens that justice has been duly administered, but also from its significance as an essential discipline in the administration of justice.

14. Very recently, in ***Rohit Chaturvedi Vs. State of Uttarakhand & others***[4] Hon'ble Supreme Court held in its expression:

> *"It is a settled principle of law that any order affecting rights of a person and particularly his liberty must be with reasons and must reflect due application of mind. Recording of reasons is not an empty formality, it is a safeguard against arbitrariness and ensures transparency, fairness, and accountability in decision-making. The absence of reasons renders it bald and makes it impossible to ascertain whether relevant factors were duly considered or not."*

15. Added to that, in view of the specific language employed in the N.I Act, the said Act does not regulate petitioner's/Appellant's statutory right to challenge conviction, sentence or compensation by instituting an Appeal. Furthermore, when there is no mandatory stipulation such as a condition precedent prescribed for filing an Appeal and also availing suspension of sentence during pendency of an Appeal under the provisions of the Negotiable Instruments Act, routinely and mechanically while deciding the rights of petitioner/Appellant which are directly nexus to the personal liberties in the backdrop of our Indian socio-economic conditions.

16. Therefore, in the light of the above statutory provisions coupled with well-settled legal principles by the Apex Court, there is no iota of doubt about the power of the Appellate Court to impose a condition to deposit 20%

[4] 2026 SCC Online SC 865

amount. However, it is always open for the Appellate Court to grant suspension of sentence with a condition to deposit 20% or without the same too.

17. In plain words, Appellate Court directing the accused to deposit 20% of the compensation under Section 148 of the Negotiable Instruments Act, 1881 is not compulsory in each and every case. The Appellate Court may, depending on the facts and circumstances of the case, determine whether the deposit should be fixed at 20%, reduced to a lesser amount, or waived altogether. However, the Court must clearly explain the reasons for whatever decision it takes. Succinctly, whether the Court directs a 20% deposit, reduces the amount, or waives the deposit altogether, it must record reasons for its decision. Appellate Court is bound to record reasons while exercising its discretionary power, whether it directs the deposit of 20% of the amount, reduces the deposit, or waives it altogether. Reasons must invariably be recorded in support of such exercise of discretion.

18. Coming to the case on hand, the impugned order passed by the learned Appellate Court does not disclose any consideration as to whether the case falls within the exception or not, or whether the circumstances warrant suspension of sentence with or without imposing the condition of deposit of 20% of the fine/compensation amount. Hence, the order under challenge is liable to be set aside.

19. Accordingly, instant Criminal Petition is disposed of, at the stage of admission itself, with the following directions:

i) Order dated 22.04.2026 in Crl.M.P.No.195 of 2026 in Crl.A.No.144 of 2026 passed by the learned III Additional District & Sessions Judge, Kakinada, East Godavari District, hereby set aside and remanded back to the Appellate Court.

ii) Petitioner/Appellant shall appear in person or by counsel before the concerned Appellate Court in ten days (10) from the date of receipt of copy of this order and on such appearance, Appellate Court shall consider Crl.M.P.No.195 of 2026 in Crl.A.No.144 of 2026 afresh by duly giving an opportunity of hearing to both sides and dispose of the same as expeditiously as possible, preferably within a period of fifteen (15) days. Till then, the sentence imposed by learned Trial Court shall stand suspended.

iii) In the event of failure of the petitioner/Appellant to appear before the concerned Appellate Court as stipulated above, this Order shall stand automatically revoked, without recourse to this Court.

iv) Needless to state that the concerned Appellate Court shall decide the application on the touchstone of the well-settled legal principles.

As a sequel, Interlocutory applications pending, if any, shall stand closed.

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JUSTICE MAHESWARA RAO KUNCHEAM

Date: 04.11.2026
RMR

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THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION NO: 4840 of 2026

04.11.2026

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