2025:PHHC:022339

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122-1

CRR-412-2025 (O&M)
Decided on : 15.02.2025

Prem Adip Rishi

. . . Petitioner(s)

Versus

Anand Singh Bhaduria

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Karan Kaushal, Advocate and
Mr. Kender Mani, Advocate
for the petitioner(s).

****

SANJAY VASHISTH, J. (Oral)

CRM-6461-2025

Present application has been moved by the applicant-petitioner seeking condonation of delay of 57 days in filing the criminal revision petition.

Considering the grounds mentioned in the application and the observations made by Hon'ble Apex Court in the case, titled as, *"State of Odisha v. Surendra Munda, 2020(4) RCR (Criminal) 286 : Law Finder Doc Id #1741196,"* prayer made therein is allowed.

Accordingly, delay of 57 days in filing the accompanying criminal revision petition is hereby allowed.

CRM-6462-2025

Allowed as prayed for.

CRR-412-2025 (O&M)

1. Prayer in the Criminal Revision Petition is for setting aside the

orders dated 20.01.2025 and 20.09.2024, passed by Ld. Additional Sessions Judge, Gurugram in CRA No.429 of 2024, titled as, "Prem Adip Rishi v. Anand Singh Bhaduria and others", instituted on 17.09.2024, under Section 138 of the Negotiable Instruments Act, 1881, Complaint bearing No. NACT-16457-2017.

2. Learned counsel for the petitioner has stated that petitioner was prosecuted in a complaint under Sections 138, 141 & 142 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), and he was convicted by learned Judicial Magistrate Ist Class, Gurugram, under Section 138 of the Act, vide judgment of conviction dated 21.08.2024 and vide order of sentence dated 22.08.2024 (Annexure P-1), he was ordered to undergo simple imprisonment for a period of one year and was also ordered to pay compensation of Rs.17,50,000/- (Rupees Seventeen Lac and Fifty Thousand only) to the complainant (respondent herein).

Learned counsel further submitted that by challenging the judgment of conviction and order of sentence dated 21/22.08.2024 (P-1), the petitioner filed an appeal before the Court of learned Additional Sessions Judge, Gurugram and thereupon learned Appellate Court vide its impugned order dated 20.09.2024, suspended the order of sentence *qua* petitioner, subject to deposit 20% of the compensation amount with the aid of Section 148 of the Act. Due to the financial constraints, petitioner failed to comply with the order dated 20.09.2024, and the learned Appellate Court vide its order dated 20.01.2025, grant an opportunity to the petitioner (convict) to deposit the stated amount in terms of order dated 20.09.2024, passed earlier and adjourned the matter for 18.02.2025 for the said purpose and also stated that in failing the compliance, necessary consequences as per law shall ensue. This is how the

petitioner is before this Court by way of present Criminal Revision Petition.

Besides, learned counsel submits that even otherwise also, impugned orders dated 20.09.2024 & 20.01.2025, passed by the learned Appellate Court, are in violation of the law settled by Hon'ble Supreme Court in ***Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. and others, 2024(1) SCC (Cri) 90,*** wherein it has been held that while considering the prayer under Section 389 of the Cr.P.C. of an appellant who has been convicted for offence under Section 138 of the Act, it is always open for the Appellate Court to consider, whether the appeal before it, is an exceptional case or not, which warrants grant of suspension of sentence, but without imposing the condition to deposit 20% of the fine/compensation amount. And, 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, which is missing in the present case. It is submitted that learned Court below has not appreciated the facts of the case and other circumstances of the petitioner, as per mandate of the Hon'ble Supreme Court in ***Jamboo Bhandari's case*** *(supra)*.

3. After hearing learned counsel for the petitioner and perusing the record, it is apparent that sentence of the petitioner was suspended by learned Appellate Court subject to the deposit of 20% of the compensation amount awarded by learned trial Court. However, petitioner did not comply with the same.

This Court is of the view that dispute raised through the present petition can be decided *in limine* and without calling the other side here, because the way this Court intends to dispose of the present petition, no

prejudice would be suffered by the complainant *qua* his rights.

4. This Court finds that the plea of the petitioner is that impugned orders dated 20.09.2024 & 20.01.2025 passed by learned Additional Sessions Judge, Gurugram, are without adhering to the directions issued by the Hon'ble Apex Court in ***Jamboo Bhandari's case*** *(supra),* as also in the case of '***Muskan Enterprises and another v. The State of Punjab and another', 2024 SCC Online SC 4107 : Law Finder Doc Id #2680202'***.

5. The Hon'ble Apex Court in ***Jamboo Bahndari's case*** *(supra)* and ***Muskan Enterprises's case*** *(supra)* has laid down certain parameters while considering Section 148 of the Act for the purpose of interpretation. It has been held that the object of Section 148 of the Act is not mandatorily to be followed rather, it is directive and the direction to pay or deposit 20% of the compensation amount, which is maximum, is to be passed by the concerned Court after examining the facts and circumstances of the case before it.

6. In ***Jamboo Bahndari's case*** *(supra),* the view taken by the Hon'ble Apex Court in an earlier case, i.e. ***Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC (Crl.) 461'***, has also been discussed, wherein, the object and reason of the amendment in Section 148 of the Act was discussed. The observations made in para Nos. 5 to 12 of the judgment in Jamboo Bhandari's case (supra) are reproduced herebelow:

> *"5. The paragraph `8' of the decision of this Court in the case of Surinder Singh Deswal Alias Colonel S.S. Deswal and Others (2019) 11 SCC 341 reads thus: -*
>
> > *"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*

the word used is not "shall" and therefore the discretion is vested with the first 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, 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., 1973 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, a 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 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 transactions. Parliament has thought it fit to amend section 148 of the 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.

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., 1973 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., 1973 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.*

10. *In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.*

11. *The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court .*

12. *In these circumstances, we set aside the impugned orders of the High Court and restore the revision petitions filed by the appellants before the High Court . We direct the parties to appear before the roster Bench of the High Court on 09.10.2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court , it*

> *will not be necessary for the High Court to issue a notice of the date fixed for hearing. The High Court , after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the Revision Petitions in the light of what we have observed in this judgment. Till the disposal of the restored Revision Petitions, the interim order passed by this Court ordering suspension of sentence will continue to operate.*

7. Again, in ***Muskan Enterprises's case*** *(supra),* Hon'ble the Apex Court has noticed certain additional parameters, which are required to be looked into in such like cases, which reads thus:

> *"**27.** We may take the discussion a little forward to emphasize our point of view. There could arise a case before the Appellate Court where such court is capable of forming an opinion, even in course of considering as to what would be the appropriate quantum of fine or compensation to be kept in deposit, that the impugned conviction and the consequent sentence recorded/imposed by the trial court is so wholly incorrect and erroneous that it is only a matter of time for the same to be set aside and that ordering a deposit would be unnecessarily burdensome for the appellant. Such firm opinion could be formed on a plain reading of the order, such as, the conviction might have been recorded and sentence imposed without adherence to the mandatory procedural requirements of the N.I. Act prior to/at the time lodging of the complaint by the complainant rendering the proceedings vitiated, or the trial court might have rejected admissible evidence from being led and/or relied on inadmissible evidence which was permitted to be led, or the trial court might have recorded an order of conviction which is its ipse dixit, without any assessment/analysis of the evidence and/or totally mis-appreciating the evidence on record, or the trial court might have passed an order failing to disclose application of mind and/or sufficient reasons thereby establishing the link between the appellant and the offence, alleged and found to be proved, or that the compensation awarded is so excessive and outrageous that it fails to meet the proportionality test : all that, which would evince an order to be in defiance of the applicable law and, thus, liable to*

be labelled as perverse. These instances, which are merely illustrative and not exhaustive, may not arise too frequently but its possibility cannot be completely ruled out. It would amount to a travesty of justice if exercise of discretion, which is permitted by the legislature and could indeed be called for in situations such as these pointed out above, or in any other appropriate situation, is not permitted to be exercised by the Appellate Court by a judicial interpretation of 'may' being read as 'shall' in sub-section (1) of Section 148 and the aggrieved appellant is compelled to make a deposit of minimum 20% of the fine or compensation awarded by the trial court , notwithstanding any opinion that the Appellate Court might have formed at the stage of ordering deposit as regards invalidity of the conviction and sentence under challenge on any valid ground. Reading 'may' as 'may' leads to the text matching the context and, therefore, it seems to be just and proper not to denude the Appellate Court of a limited discretion conferred by the legislature and that is, exercise of the power of not ordering deposit altogether albeit in a rare, fit and appropriate case which commends to the Appellate Court as exceptional. 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. 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, reveals 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.

> ***28.*** *In such view of the matter and for the foregoing reasons, we are unhesitatingly of the view that the impugned order of the High Court declining to entertain the subsequent petition under Section 482, Cr. PC of the appellants is unsustainable in law. However, we do not consider the need to remit the matter to the High Court for consideration of the subsequent petition under Section 482, Cr. PC; instead, in our view, justice would be sufficiently served if the Sessions Court re-examines the issue of deposit being required to be made by the appellants in the light of the law laid down in Jamboo Bhandari (supra) and the observations made hereinabove.*
>
> ***29.*** *Consequently, the impugned order of the High Court dated 18th May, 2024 and the Sessions Court's order dated 17th October, 2022, stand set aside. The matter is remitted to the Sessions Court to re-examine the issue of ordering deposit. Whether sufficient ground has been made out by the appellants to persuade the Sessions Court not to order any deposit is left entirely to its discretion and satisfaction. We do not express any opinion on the plea that the appellants have sought to advance before us, lest any party seeks to derive any advantage. All points are left open.*

8. This Court has already considered the similar plea in ***CRM-M-3861-2025***, ***"M/s Devgan Rice and General Mills v. M/s Jasbir Bhullar Trading Company and another"*** (Date of Decision: ***28.01.2025***), wherein the non-speaking order, without noticing the directions passed in ***Jamboo Bahndari's case*** *(supra)* and ***Muskan Enterprises's case*** *(supra)*, was assailed and same has been partly allowed by issuing directions to re-decide the said issue again in accordance with the law laid down by the Hon'ble Apex Court.

9. After examining the impugned orders dated 20.09.2024 & 20.01.2025, and in view of the judicial precedents settled by Hon'ble Apex Court in ***Jamboo Bhandari's case*** *(supra)* and ***Muskan Enterprises's case***

(supra), without commenting anything on the merits of the case, the present Criminal Revision Petition is disposed of and learned lower Court (Appellate Court) is directed to re-examine the case in view of law laid down by the Hon'ble Apex Court in ***Jamboo Bhandari's case*** *(supra)* and ***Muskan Enterprises's case*** *(supra)* and after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances, decide afresh whether it is an appropriate case that warrants waiver of the requirement of deposit of 20% of the compensation awarded by learned trial Court.

The directions given in the orders dated 20.09.2024 & 20.01.2025 by learned Appellate Court to the extent of depositing 20% of compensation, are set aside and it is also clarified that the order of suspension of sentence would not be disturbed in any manner and same would be subject to the observations, which are yet to be made by the Appellate Court while dealing with the provisions of Section 148 of the Act.

With the aforementioned observations, present petition stands disposed of.

Let copy of this order be sent to the Lower court, for information and necessary compliance.

(SANJAY VASHISTH)
JUDGE

February 15, 2025
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No