IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

152 **CRM-M-6251-2025(O&M)**
Date of Decision:03.02.2025

M/s Power Onicks Ltd. and others

. . . . Petitioner

Vs.

Tarlochan Singh HUF

. . . . Respondents

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CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

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Present: Ms. Mona Goyal, Advocate for the petitioners.

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SANJAY VASHISTH, J.

1. Present petition has been filed under Section 528 of BNSS, seeking quashing of condition/direction of depositing 20% of the cheque amount imposed vide impugned conditional order dated 25.11.2024(P-1).

2. Vide judgment dated 23.10.2024, petitioners have been convicted by the Court of learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib for committing an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act of 1881') and thereupon, sentenced to undergo rigorous imprisonment for a period of two years alongwith payment of compensation equal to the cheque amount i.e. Rs. 20,00,000/- (Rupees twenty lacs only) to the complainant(respondent herein).

3. Assailing the judgment of conviction and order of sentence, appeal was filed by the petitioner, which is pending before the Court of Sessions. While suspending order of sentence of the petitioner(s), Learned Appellate Court imposed a direction to pay 20% of the compensation/cheque amount.

4. On advance notice, Mr. Sunil Kumar Bajaj, Advocate appears on behalf of respondent.

5. It would be apt to mention here that while reading the impugned order dated 25.11.2024, it is noticed that the cheque amount has been mentioned as Rs.2,00,000/- (Rupees two lacs) instead of Rs.20,00,000/- (Rupees twenty lacs) and therefore, Rs. 40,000/- i.e. 20% of the compensation awarded has been ordered for its deposit. Infact, it appears that the said error has crept in inadvertently and Rs.2,00,000/- needs to be read as Rs.20,00,000/- and Rs.40,000/- as Rs.4,00,000/-

6. Be that as it may, this Court finds that the plea of the petitioner is that impugned order dated 25.11.2024 passed by Sessions Judge, Sri Muktsar Sahib is without adhering to the directions issued by the Hon'ble Apex Court in ***'Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and others, (2023) 10 Supreme Court cases 446,*** and '***Muskan Enterprises and another Vs. The State of Punjab and another', 2024 SCC Online SC 4107, Law Finder Doc Id #2680202'***.

7. The Hon'ble Apex Court in **Jamboo Bahndari's case (Supra)** and **Muskan Enterprises' case (Supra)** has laid down certain parameters while considering Section 148 of the Act of 1881 for the purpose of interpretation. It has been held that the object of Section 148 of the Act of 1881 is not that criteria of 20% is to be mandatorily followed in all case, rather, it is directive and the required direction to

pay or deposit 20% of the compensation/ cheque amount, which is maximum, is to be passed after examining the facts and circumstances of the case before it.

8. In ***Jamboo Bhandari's case (supra),*** the view taken by the Hon'ble Apex Court in ***Surinder Singh Deswal Vs. Virender Gandhi, (2019) 11 SCC (Cri) 461'***, has been discussed, wherein, the object and reason of the amendment in Section 148 of the Act of 1881 has been discussed. Relevant paragraphs 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: -*
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> > *"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 CrPC, 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.*

9. The ratio of law laid down in **Jamboo Bhandari's case (supra)** has been again noticed by Hon'ble the Supreme Court in ***'Muskan Enterprises and another V. The State of Punjab and another'***, wherein certain additional parameters, which require to be looked into have also been discussed. Relevant paragraphs are as under:

> *"**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.*
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> ***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.*

10. This Court has already considered the similar plea in CRM-M-3861-2025, titled as, ‘M/s Devgan Rice and General Mills Vs. 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 Bhandaris case supra*** and ***Muskaan’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.

11. In the present case after examining the impugned order dated 25.11.2024 (P-1), same infirmity is noticed and therefore, the order assailed herein is set aside to the extent of imposing condition of making payment of 20% of compensation amount under Section 148 of the Act of 1881.

12. It is further directed that the question of making compliance of the directions of law i.e. Section 148 of the Act of 1881, to deposit amount upto 20% of the

compensation amount, as awarded by learned Trial Court would be decided afresh, after affording reasonable opportunity to both the sides and according to the observations made by the Hon'ble Apex Court in **Jamboo bhandari's case (supra)** and **Muskan Enterprises' case (supra)**.

Ld. Appellate Court shall re-decide the compensation amount by mentioning the correct amount of total compensation granted by Ld. Trial Court i.e. **Rs. 20 lacs *or* Rs. 2 lacs.**

13. It is also clarified that the order of suspension of sentence would not be considered as 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 provisions of Section 148 of the Act of 1881.

With the aforementioned observations, present petition stands disposed of.

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

(SANJAY VASHISTH)
JUDGE

03.02.2025
Rashmi

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? ***Yes/No***