

Court No. - 77

Case :- APPLICATION U/S 528 BNSS No. - 7574 of 2025

Applicant :- Rajesh Kumar Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Naman Agarwal, Nipun Singh

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Nipun Singh, learned counsel for the applicant and Sri Pankaj Saxena, learned AGA for the State.
2. The present application has been filed to quash the order dated 11.02.2025 passed by learned Additional District & Sessions Judge/Special Judge (SC/ST) Act, Gautam Buddha Nagar in Criminal Appeal No.76 of 2024, Rajesh Kumar Gupta Vs. Ram Avtar Gupta (H.U.F.), u/s 148 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act, 1881'), Police Station-Kasna, District-Gautam Buddha Nagar, pending in the court of learned ADJ-II/Special Judge (SC/ST) Act, District Court, Gautam Buddha Nagar.
3. Facts giving rise to the present controversy is that a complaint was filed by opposite party no.2 against the applicant u/s 138 of the Act, 1881, in which the applicant was convicted against which appeal was filed by the applicant. During the pendency of appeal while staying the conviction order, the appellate court directed the applicant to deposit 20% of compensation. That order was challenged by the applicant before this court by way of an Application u/s 482 No.36957 of 2024 which was disposed of by this court vide order dated 25.10.2024 setting aside the order of the appellate court dated 07.10.2024 and remanded the matter back to the appellate court to pass fresh order, subject to the condition that applicant will deposit 10% of fine.

4. In compliance of the order dated 25.10.2024 passed by this court in Application u/s 482 No.36957 of 2024, the applicant had also deposited 10% of the compensation amount before the appellate court and thereafter moved an application that the condition to deposit 20% of compensation is absolutely arbitrary and unjust. As the amount is very huge, therefore, it would be unjust to direct the applicant to deposit 20% of the compensation as a condition to stay the conviction order. That application was rejected vide order dated 11.02.2025 with further direction to the applicant that for considering his financial condition and making opinion whether the case of the applicant falls in exceptional category, he was directed to file source of income, ITR, if any, for the last five years. This order is under challenge.

5. Learned counsel for the applicant has submitted that court below while passing the order dated 11.02.2025 has misread the earlier order passed by this court dated 25.10.2024 as well as judgement of Apex Court in **Muskan Enterprises and Another Vs. State of Punjab and Another** reported in **2024 SCC OnLine SC 4107**, wherein it is observed that the appellate court should have considered whether the condition to deposit 20% amount is unjust or not but the court below erroneously directed the applicant to submit his source of income which is not relevant. Therefore, order is absolutely erroneous.

6. *Per contra*, learned AGA has submitted that the court below has yet to pass a final order and just to assess the financial condition of the applicant, if the court directs to submit his ITR for the last five years, there is no illegality.

7. After hearing the submission of learned counsel for the parties and on a perusal of record, it is not in dispute that in pursuance of the earlier order dated 25.10.2024 of this court passed in Application u/s 482 No.36957 of 2024, the applicant had deposited 10% of compensation before the court below and court below was required to pass fresh order u/s 148 of the Act,

1881 regarding imposing of condition to deposit amount for staying the conviction order.

8. From the perusal of the impugned order, it is clear that appellate court has observed that whether the case of the applicant falls in exceptional category or not, to determine this issue, it is necessary to consider the financial condition of the applicant and direct him to submit ITR for the last 5 years. Though, it is correct in view of the law laid down by the Apex Court in **Jamboo Bhandari vs M.P. State Industrial Development Corporation Ltd. and others** reported in **(2023) 10 SCC 446** as well as **Muskan Enterprises (supra)** that while passing order u/s 148 of the Act, 1881, direction for awarding compensation should not be excessive or unjust and it is not mandatory to impose condition of deposit, 20% of compensation and court has discretion to reduce or exempt in appropriate cases. Therefore, while passing order u/s 148 of the Act, 1881, court has to consider that condition of deposit of 20% will not be unjust but also, the fact whether the imposing condition would amount to deprivation of the right of the appeal of the appellant. Therefore, for passing final order u/s 148 of the Act, 1881, court can gather the required facts regarding financial condition of the appellant.

9. Therefore, there is no illegality in the impugned order dated 11.02.2025. However, it is expected from the court below that while passing order u/s 148 of the Act, 1881, the court below will consider that the condition of imposing 20% compensation may not be excessive but also should not be unjust.

10. With the aforesaid observations, present application is **disposed of**.

Order Date :- 7.3.2025
S.Chaurasia