IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : July 02, 2025
Pronounced on : September 24, 2025

1. CRM-M-7799-2025

M/s Coromandel International Limited

...Petitioner

Versus

Shri Ambica Sales Corporation

...Respondent

2. CRM-M-8498-2025

M/s Coromandel International Limited

...Petitioner

Versus

Shri Ambalica Agro Solutions

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashok Singla, Advocate, and
Mr. Ankush Singla, Advocate,
for the petitioner.

Mr. Deepender Singh, Advocate,
Amicus Curiae.

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ANOOP CHITKARA, J.

1. The above two connected matters were placed before this Bench to answer the following legal propositions:

(a) Whether imposition of condition to deposit 20% of the compensation amount awarded by the Trial Court, is sustainable or not, while deciding the application for suspension of sentence in an appeal, when the judgment of conviction and order of sentence is still awaiting confirmation?

(b) Whether the right of the convict-appellant being on bail in pending appeal, can be subjected to the compliance of direction to pay 20% of the compensation amount under Section 148 of the NI

Act?

(c) Whether the right of bail can be taken away by the Appellate Court, where final adjudication of the appeal is pending, due to non-compliance of the direction to pay 20% of the compensation amount under Section 148 of the NI Act, for any justifiable or un-justifiable reason, as discussed in the cases of Jamboo Bhandari[1] and Muskan Enterprises[2]?

(d) Whether it is a pre-condition to deposit 20% of the compensation amount awarded by the Trial Court, for getting an appeal decided?

2. Learned counsel for the petitioner argued that in various judgments of the Hon'ble the Supreme Court, the situation of passing a conditional order at the time of suspending the sentence has already been discussed, and thereupon it is clearly observed that the Appellate Court can impose such a condition in view of Section 148 of the NI Act. Once the Hon'ble Apex Court has already settled a proposition of law, no other view can be taken regarding the condition to be imposed while granting bail in appeal.

3. Mr. Deepender Singh, Advocate, learned Amicus, by placing reliance on the judgment of Hon'ble Supreme Court in the case of **G.J. Raja v. Tejraj Surana, 2019 (3) RCR (Criminal) 959 : (2020) 3 SCC (Cri) 725: Law Finder Doc ID # 1550138 [SC, D/d. 30.07.2019]**, submitted that undoubtedly a deposit of 20% of the compensation or fine amount would be decided by the Appellate Court by following the spirit and ratio of the subsequent judgments of the Apex Court in Jamboo Bhandari (*supra*) and Muskan Enterprises (*supra*). However, in the said cases, there was no such issue directly involved before the Hon'ble Apex Court, whether the right under Section 430 BNSS (corresponding to Section 389 CrPC) is absolutely independent and it has nothing to do with the compensation or fine amount to be deposited under Section 148 of the NI Act. He also submitted that basically the amount is ordered under Section 395 BNSS (correspond to Section 357 CrPC) and as per mandate

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1 Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors., (2003) 10 SCC 446. [Decided on 04-09-2023].

2 Muskan Enterprises and another v. State of Punjab and another, 2024 SCC Online SC 4107 [Decided on 19-12-2024]

of the judgment in G.J. Raja's case (supra), the remedy available to the complainant is to seek recovery of the compensation or fine amount in the same manner as is adopted in respect of interim compensation ordered by the Trial Court under Section 143A of NI Act. Be it an additional amount in appeal, i.e. in furtherance to what has already been ordered by the Trial Court, the amount still being part of the order passed under Section 430 BNSS, has to be recovered under Section 421 CrPC (corresponding to Section 461 BNSS) only, and the same need not to be made a pre-condition for grant of bail by suspending the sentence. Once the Appellate Court is equipped with the discretionary power to satisfy itself firstly and then can take any view by waiving or lowering down the amount of compensation or fine even less than 20%, the appellant in such situation would be at liberty to express his financial condition, hardship or his plight as to why he is unable to meet out such a condition, while seeking bail.

4. Ld. Amicus further submitted that the offence under Section 138 of the NI Act is basically non-cognizable and bailable, for which the maximum sentence is two years. The provision of the NI Act is not to create any hardship, but it is a proceeding of a simple criminal case, not like an ordinary criminal trial. In other words, the accused in such cases cannot be declared uniformly criminal and, therefore, cancellation of bail would be a harsher view in derogation of the theme of the NI Act.

5. Referring to the proviso mentioned in the first part of Section 148 of NI Act and also the last sub-section thereof, Mr. Deepender Singh, learned Amicus submitted that the provision itself deals with a situation where if the appeal preferred by the convict is allowed, the deposited amount is to be paid back to him by the complainant along with interest within a specified time. However, it nowhere addresses a situation where the loss or hardship of incarceration, if suffered by the appellant due to imprisonment for non-payment of compensation or fine under Section 148 of the NI Act, would be compensated. Thus, the appellant cannot be

marshaled to deposit the compensation or fine amount, and in failing to do so, his liberty cannot be curtailed by withdrawing the bail.

6. Mr. Deepender Singh, learned Amicus also expounded his submission by reading out the Aims and Objects of the Negotiable Instruments Act, 1881, as it stood at the time of its enactment, and argued that the same were to provide *a unified, legal framework for regulating promissory notes, bills of exchange, and cheques, thereby legalizing their system of transfer by negotiation, protecting the rights of parties, ensuring certainty in transactions, and facilitating smooth trade and commerce. The Act aimed to establish clear, authoritative rules for these instruments, which were often called Hundi in India, ensuring their smooth and secure flow in financial transactions.* The key aims and objects of the Negotiable Instruments Act as it stood in 1881 were to create a uniform legal framework: The Act was introduced to establish a single, clear, and comprehensive law for negotiable instruments across India, which, at that time was under the British domain; legalize and strengthen financial transactions. It aimed to facilitate trade and commerce by providing legal backing for non-cash payment instruments, thereby increasing financial security and trust and to consolidate existing mercantile practices. The legislation was an attempt to consolidate the prevailing customs and usages, though it explicitly preserved certain local traditions related to instruments like hundis unless excluded by the parties involved, and enhance negotiability and ownership rights. The Act's core purpose was to legalize the system of negotiation, enabling these instruments to be transferred from person to person like goods. It established the rights of a "holder in due course" who, in good faith and for value, could acquire an instrument free from defects in the previous owner's title to provide legal clarity and certainty. The Act defined the rules related to the creation, transfer, and enforcement of promissory notes, bills of exchange, and cheques, thereby reducing ambiguity and facilitating dispute resolution, to clarify liabilities of parties. It further defined the obligations and liabilities of all parties involved in the transaction, from the maker and acceptor to the endorser; and the original

1881 Act did not include criminal penalties for the dishonour of cheques, as those provisions were added by later amendments in 1988.

7. Learned Amicus also submitted that the experience of the last about 144 years shows that the NI Act has been used more by the unscrupulous Money lenders, the affluent people, Firms, Companies, etc., who are wealthy and capable of lending money to the poorer strata of society. The ground realities cannot be ignored that the courts are flooded with cases where the one of the party to the lis, while lending a meagre amount, besides charging very high rates of interest, also create a charge over the immovable property(s), by getting various types of agreements signed or executed from the borrower or needy people. Resultantly, in the maximum number of cases where such a borrower is unable to repay, they have to lose the right to such immovable property(s), even if they received a very meagre amount borrowed much earlier, and the value of the property may increase manifold. In many of the cases, where civil litigations are instituted, such as a suit for recovery, it is seen that an illiterate borrower is compelled to sign blank papers or sometimes an agreement to sell while lending the money, which are generally signed, but not with the intention to sell the property.

8. We have also gone through the record, and an analysis of the submissions, provisions, and the precedents would lead to the following outcome.

9. The pivot of all the propositions of law referred to the Division Bench is Section 148 of the Negotiable Instruments Act, 1881, after now referred to as NI Act (inserted by Amendment Act No. 20 of 2018, notified on August 02, 2018). Therefore, it shall be relevant to extract Section 148 of the NI Act, and it reads as follows:

> ***"148. Power to Appellate Court to order payment pending appeal against conviction. -*** *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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."

10. Another relevant provision, which needs to be considered, would be Section 430 of BNSS, 2023, which corresponds to Section 389 of CrPC, 1973, and the same reads as under: -

"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."

11. At the same time, it requires noticing that an offence under Section 138 of the NI Act is bailable, non-cognizable, and the maximum sentence that can be imposed shall not exceed the period of two years of imprisonment, or it can be a fine only, which may extend to twice the amount of the cheque, or with both.

12. Sections 430 BNSS and 148 NI Act do not overlap and are independent of each other. Sections 415 & 430 BNSS (correspond to Sections 374 & 389 of Cr.P.C.) are also independent statutory rights to file an appeal against conviction and to seek suspension of sentence during the pendency of such an appeal. These statutory rights have not been taken away or even restricted by the non-obstante clause of Section

148 NI Act, which excludes application of CrPC, 1973 (BNSS, 2023), and this is for the reason that there is no specific provision for filing and hearing of appeals and suspension of sentence under the NI Act, and '*none can be left remediless*'.

13. The first proposition that has to be answered is, "Whether imposition of condition to deposit 20% of the compensation amount awarded by the Trial Court, is sustainable or not, while deciding the application for suspension of sentence in an appeal, when the judgment of conviction and order of sentence is still awaiting confirmation?"

14. In **G.J. Raja v. Tejraj Surana, (2020) 3 SCC (Cri) 725: 2019 (3) RCR (Criminal) 959: Law Finder Doc Id # 1550138, decided on 30.07.2019**, though not at the stage of appeal but during course of trial, there was an order passed by the Trial Court to pay 20% of the cheque amount as interim compensation, by virtue of Section 143-A of NI Act. After failing until the High Court, the accused took the issue to the Hon'ble Apex Court, and in paragraphs 12 and 23 of the judgment, the Hon'ble Supreme Court holds,

> *"12. It is thus clear that in case an accused, against whom an order to pay interim compensation under Section 143A of the Act is passed, fails or is unable to pay the amount of interim compensation, the process under Section 421 can be taken resort to which may inter alia result in coercive action of recovery of the amount of interim compensation as if the amount represented the arrears of land revenue. The extent and rigor of the procedure prescribed for such recovery may vary from State to State but invariably, such procedure may visit the person concerned with coercive methods.*
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> *23. We must, however, advert to a decision of this Court in* ***Surinder Singh Deswal and Ors. v. Virender Gandhi, 2019(3) RCR (Criminal) 186 : (2019) 8 SCALE 445*** *where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate*

stage where the accused is already found guilty of the offence under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to Sub-Section (5) of Section 143A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal stands on a different footing."

15. In **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. and others, 2023-INSC-822: (2023) 10 SCC 446: Law Finder Doc Id # 2313888, decided on 04.09.2023**, the Hon'ble Supreme Court holds,

"[4]. The High Court relied upon the decision of this Court in the case of Surinder Singh Deswal v. Virender Gandhi [2019) 11 SCC 341]. The High Court proceeded on the footing that, as this Court has interpreted the word "may" appearing in Section 148 as "shall", the relief of suspension of sentence under Section 389 of the Cr.P.C. can be granted only by directing the accused to deposit minimum of 20% of the compensation/fine amount.

[5]. The paragraph '8' of the decision of this Court in the case of Surinder Singh Deswal 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 CrPC 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. 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.

[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."

16. In **Muskan Enterprises & Anr. v. The State of Punjab & Anr.**, **2024 INSC 1046: 2024 SCC Online SC 4107: Law Finder Doc Id # 2680202, decided on 19.12.2024**, the Hon'ble Supreme Court holds,

"[26]. Wearing the glasses of the statute-maker, we need to read the text as set in the context. What is most significant is that the legislature has used both the verbs 'may' and shall' in sub-section (1) of Section 148, N.I. Act, but in different contexts. As we read and understand the sub-section, what we find is that the verb 'may', implies discretion; and, if intended to have its natural meaning, it would refer to the discretion left to the Appellate Court to determine as to whether such court should order any deposit to be made by the appellant or not pending hearing of the appeal against the conviction and sentence recorded by the trial court. What Jamboo Bhandari (supra) lays down is that deposit may not be ordered if the Appellate Court finds a case to be exceptional not calling for a deposit and the reasons for not ordering a deposit are recorded in the order. On the

contrary, the verb 'shall' used in the same sentence and distanced from the verb 'may' by 8 (eight) words, typically implies an obligation or duty that is referable to the quantum of deposit, that is, the deposit, in any case, must not be less than 20% of the fine or compensation awarded by the trial court. What follows is that once the Appellate Court is satisfied that a deposit is indeed called for, in an appropriate case, such court's power is in no way fettered to call upon the appellant to deposit more than 20% of the awarded compensation, but in no case can it be less than 20%. Interestingly, while the proviso to sub-section (1) and sub-section (2) of Section 148 use 'shall' in the relevant context, sub-section (3) again reverts to 'may' and its proviso to 'shall'. User of the verbs 'may' and 'shall' in different contexts in the same section is clearly suggestive of the legislative intent to mean what it said.

[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.P.C. 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. P.C; 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.*

17. While deciding Surinder Singh Deswal (supra), the Hon'ble Supreme Court concluded that the word 'may' mentioned in the language used for Section 148 of the NI Act, is to be construed as a mandatory rule in general and, thus, 'may' would be understood as 'shall'. At the same time, it left it open to exercise the power by the Appellate Court, if the case can be considered as a case of exception by assigning special reasons.

18. However, while dealing with the proposition of law, as done in Surinder Singh Deswal's case (*supra*), in the case of Jamboo Bhandari (*supra*), Hon'ble Supreme Court enlarged the scope of discretion even to the extent that there can be hundred percent waiving of the deposit of 20% of the compensation/fine amount by the Appellate Court, if the appeal and the other circumstance(s) in its view falls under the category of exception. At the same time, it is necessary to bear in mind that such a situation was visualized by the Hon'ble Supreme Court, especially where the plea of suspension of sentence is to be considered without imposing any condition.

19. It may not go without saying that while considering Surinder Singh Deswal (*supra*) or even in the cases of Jamboo Bhandari (*supra*) and Muskan Enterprises (*supra*), the independent status of right of suspension of sentence of an appellant vis-à-vis the condition of payment of 20% compensation amount as per Section 148 of the NI Act, was not directly a question for consideration before the Hon'ble Supreme Court.

20. Even in the case of G.J. Raja (*supra*), the issue of cancellation of bail, if the ordered amount under Section 148 of the NI Act is not deposited, was never a question. However, it talks about the manner of recovery only. Instead, the only issue in this case was regarding the aspect of whether the impact of Section 143A of the NI Act, which came into force w.e.f. 01.09.2018, would be prospective or retrospective in a complaint that was filed on 04.11.2016.

21. Thus, as per Jamboo Bhandari (*supra*), which was relied upon by the Hon'ble Supreme Court in Muskan Enterprises (*supra*), it is no longer *res integra* that normally the Appellate Court will be justified in imposing the condition of deposit of 20%, as provided in Section 148 NI Act. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% would be unjust or imposing such a condition would amount to depriving the appellant of the right to appeal, an exception can be made for the reasons specifically recorded.

22. The words, "*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.*", used by the Hon'ble Supreme Court in Muskan Enterprises (*supra*), would certainly include a reduction of the amount below 20%, because if the Appellate Court can exempt the entire 20%, it can also reduce the deposit below 20% depending upon the convict's financial capacity. Any other interpretation would imply that even if a convict is willing to pay some amount, e.g., 15%, 10%, or 5%, and the Appellate Court exempts the entire amount, thereby preventing the complainant from collecting whatever the convict can afford to pay.

23. In **M/s R A Santana Marketing Services Pvt. Ltd. v. JMK Technology Pvt. Ltd. and another** [**Criminal Appeal No. 3635 of 2025, decided on 20.08.2025],** the Hon'ble Supreme Court holds,

> *"[4]. The High Court in exempting the respondent from payment of the 20% of the compensation has not assigned any reason whatsoever except that as the respondent is not in a position to make the said deposit, his aforesaid financial incapacity ought not come in the way of his liberty.*

> *[5]. It is true that personal liberty is paramount but when there is suspension of sentence with a direction, the respondent convict has to abide by the condition imposed while protecting his personal liberty. However, if that condition is not followed, the interim protection granted is liable to be revoked as had done in this case. Therefore, the High Court manifestly erred in law in exempting the deposit of 20% of the amount as a condition for suspension of the sentence."*

24. In **Amit Kumar (Deceased) through his LRs v. State of Haryana and another, CRM No. 20603 of 2022 and CRM-M No. 4244 of 2022, decided on 06.07.2022 [2022 (3) Law Herald 2337: Law Finder Doc Id # 2027835]**, a Single Bench of the Punjab and Haryana High Court observed,

> *"[21]. This Court hence summarizes the hereinafter principles of law which rather culminate/arise from the discussion:*
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> > *(iv) the learned Appellate Court for ensuring that the order, suspending the execution of the sentence of imprisonment, takes fullest effect, becomes enjoined to, apart from directing the convict to furnish personal and surety bonds, to also direct the convict-applicant to deposit a reasonable per centum of the cheque amount."*

25. Thus, the observations made in the concluding paragraph [21(iv)] Amit Kumar *supra* are to be read in the light of the ratio of Jamboo Bhandari and Muskan Enterprises.

26. In **Vinay Kumar v. State of Haryana and another, CRM-M-37203-2022, decided on 10.10.2022 [2023 (2) R.C.R. (Criminal) 558: Law Finder Doc Id # 2074686]**, a Single Bench of the Punjab and Haryana High Court observed,

> *"[10]. The question that arises for consideration in the present case is as follows:*
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> *Q. Whether while suspending the sentence of the appellant/convict, the Appellate Court in an appeal against conviction under Section 138 of the N.I. Act, can impose a condition that on non-deposit of minimum of twenty percent of the fine/compensation*

> *awarded by the trial court, as ordered by the Appellate Court while exercising its powers under Section 148 of the NI Act, the benefit of suspension of sentence would be liable to be automatically/consequently vacated?*
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> *xxx xxx xxx xxx*
>
> *[13]. The Hon'ble Supreme Court in Surinder Singh Deswal @ Col. S.S. Deswal (supra) after considering all the issues/contentions, adjudicated upon the issue whether the first appellate Court is justified in directing the appellant/convict, convicted under Section 138 of N.I. Act, to deposit 25% of the compensation/fine imposed by the trial Court pending appeal, challenging the order of conviction and sentence, while suspending the sentence under Section 389 Cr.P.C., held that it is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare the same as having been vacated."*

27. In Vinay Kumar (*supra*), the observations, "*However, non-compliance of the condition of suspension of sentence is sufficient to declare the same as having been vacated*," are not in line with Jamboo Bhandari and Muskan, because in none of these cases did the Hon'ble Supreme Court go to such an extent, and the conditions must form part of the order of suspension of sentence, and if the Appellant has been exempted to deposit the compensation amount, then the order must be supported by reasons.

28. In **Harwinder Singh v. Mohan Lal, Law Finder Doc Id # 1910515, decided on 10.11.2021**, the Punjab and Haryana High Court observed,

> *"[19]. That the Appellate Court in an appeal against conviction under Section 138 of the N.I Act, while suspending the sentence of the Appellant/Convict, has the power to impose a condition that on non-deposit of the fine/compensation, the benefit of suspension of sentence would be liable to be automatically/consequently vacated."*

29. After the pronouncements of Jamboo Bhandari and Muskan Enterprises, even Harwinder Singh (*supra*) is also not applicable and impliedly cannot be relied upon for the similar reasons as have been mentioned in the preceding paragraph.

30. In **Amarjit Singh v. State of Punjab, decided on 03.02.2023, Law Finder Doc Id # 2160014: 2023-PHHC-20465**, the Punjab and Haryana High Court observed,

> *"[21]. As has been observed in the afore referred judgements, the delay has compromised the sanctity of the cheque transactions, thus, the Parliament thought it fit to amend section 148 of the N.I. Act. The Appellate Court which has the power to impose the condition of deposit a part of compensation while suspending suspension of sentence and on non-deposit, the same would either automatically be vacated, if provided in the order or the said order of suspension of sentence on non-deposit of said amount can be vacated. Any other interpretation of the said provision, that the amount so ordered to be deposited can be recovered as fine under Section 421 Cr.P.C., would lead to frustrating the very object and purpose of the amendment.*
>
> *[22]. The plea that the condition to deposit the amount be waived off on account of the weak financial health of the petitioners, is found to be having no force in the light of enunciation of law by Hon'ble the Supreme Court of India, in the cases of Surender Singh Deswal (1st and 2nd judgements)."*

31. The findings in Amarjit Singh (*supra*) are also not in sync with the ratios of Jamboo Bhandari and Muskan Enterprises, and as such, are no longer good law.

32. In **Ram Kumar v. M/S Hans Raj Anil Kumar and another, CRM-M-11446-2023, decided on 03.03.2023**, **[2023-PHHC-040943: Law Finder Doc Id # 2248789]**, a Single Bench of the Punjab and Haryana High Court observed,

> *"As is exposition of law, indubitably the Appellate Court as a matter of rule has to by way of the power vested in it, direct*

> *an appellant, who has filed an appeal against the judgment of conviction under Section 138 of NI Act and the order of sentence, to deposit a minimum of 20% of the fine or compensation so awarded by the trial Court."*

33. The findings in Ram Kumar (*supra*) are also not in sync with the ratios of Jamboo Bhandari and Muskan Enterprises, and as such, it is no longer a good law because the deposit of 20% is not an absolute rule and is subject to exemptions.

34. In **Jaivinder v. State of Haryana, 2025(2) RCR(Criminal) 609; 2025-PHHC-40013, decided on 24.03.2025**, the Punjab and Haryana High Court (One of us, Justice Sanjay Vashisth) observed,

> *"[10]. After examining the impugned order dated 06.09.2023 (P-3) and in view of the judicial precedents settled by Hon'ble Apex Court in Jamboo Bhandari's case (supra) [2024(1) SCC (Cri) 90] and Muskan Enterprise's case (supra) [2024 SCC Online SC 4107], without commenting anything on the merits of the case, the present 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 Enterprise'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 order dated 06.09.2023 (P-3) by learned Appellate Court to the extent of depositing 20% of compensation, is 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."*

35. Jaivinder (*supra*) is in consonance with the spirit of Jamboo Bhandari and Muskan Enterprises.

36. After analyzing the statutory provision vis-à-vis the judicial precedents referred to above, the answer to the first proposition is that the

imposition of condition to deposit 20% of the compensation amount awarded by the Trial Court, is sustainable, while deciding the application for suspension of sentence in an appeal, when the judgment of conviction and order of sentence is still awaiting confirmation.

37. The second proposition is, "Whether the right of the convict-appellant being on bail in pending appeal, can be subjected to the compliance of direction to pay 20% of the compensation amount under Section 148 of the NI Act?

38. In **Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi, (2019) 11 SCC 341, decided on 29.5.2019 [*First case*]** Hon'ble Supreme Court holds,

> *"[6.1] The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants - original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., 1973, considering Section 148 of the N.I. Act as amended?*
>
> *[7.1] Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected.*

Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act 20 of 2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

[8] Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the N.I. 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 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 N.I. Act as amended is concerned, considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. 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 N.I. 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 of the 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 N.I. 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 N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the N.I. Act, but also Section 138 of the N.I. Act. 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 dishonoured 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, the Parliament has thought it fit to amend Section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Sec 138 of the N.I. Act.

[9] Now so far as the submission on behalf of the appellants, relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening words of the amended Section 148 of the N.I. Act are that "notwithstanding anything contained in the Code of Criminal Procedure.....". Therefore irrespective of the provisions of Section 357(2) Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court."

39. In **Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi and another, (2020) 2 SCC 514, decided on 08.01.2020**, [***Second case***], the Hon'ble Supreme Court holds,

"[19] ....When suspension of sentence by the trial

> *court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.*
>
> *[20]. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated."*

40. Answer to the second proposition was once addressed by Surinder Singh Deswal *supra* [Second case], where the Hon'ble Supreme Court held that when an Appellate Court suspends the sentence on a condition, then the failure to comply with that condition adversely affects the continuation of the suspension.

41. The Appellate Court that has suspended the sentence on a condition, after observing non-compliance, could reasonably hold that the suspension stood vacated due to the non-compliance, and it is the responsibility of the said Appellate Court, which granted the suspension, to consider the non-compliance and make an appropriate decision. Nonetheless, non-compliance with the suspension condition is enough to declare that the suspension has been vacated.

42. The third proposition is, "Whether the right of bail can be taken away by the Appellate Court, where final adjudication of the appeal is pending, due to non-compliance of the direction to pay 20% of the compensation amount under Section 148 of the NI Act, for any justifiable or un-justifiable reason, as discussed in the cases of Jamboo Bhandari and Muskan Enterprises ?

43. In **Ginni Garments v. Sethi Garments, CRR No. 9872-2018, decided on 04.04.2019**, the Punjab and Haryana High Court observed,

> *" However, still the essential question to be considered is whether the provision authorizing the Appellate Court to Order the appellant to deposit a minimum of 20% of the fine or compensation awarded by the Trial Court; is a procedural step or a provision affecting the substantive right of the appellant. In this regard, it deserves to be noted that when the case reaches before the Appellate Court, the appellant/accused has already acquired a status of 'convict', who has already been found guilty of his conduct and sentenced by the Trial Court. In case the Trial Court imposes a fine then making him to pay that amount does not effect his substantive right. Rather it is a matter of procedure only...."*

44. In **Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421, decided on 12.05.1999**, the Hon'ble Supreme Court holds,

> *"[3]. When a convicted person is sentenced to fixed period of sentence and when he files appeals under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence. So as to make the appeal right, meaningful, and effective. Of course, appellate courts can impose similar conditions when bail is granted."*

45. Section 148 of the NI Act does not mention any restriction that an appeal against a conviction under Section 138 of the NI Act shall be subject to a deposit. On the contrary, the stage for ordering the deposit arises only when an appeal is filed, and if no appeal is filed challenging the judgment, then in the absence of any pending appeal filed by the convict, the Appellate Court cannot order such a deposit on any appeal,

revision, or application filed by the complainant.

46. In **Guddan alias Roop Narayan v. State of Rajasthan, 2023 SCC Online SC 1242**, the Hon'ble Supreme Court holds,

> *"[4]. The Ld. Trial Court, vide order dated 20.02.2019 convicted the appellant u/s 307, 323 and 341 of the IPC on grounds of the recoveries made, the eyewitnesses to the incident and the medical evidence. The Appellant was thus sentenced to 10 years Imprisonment and fine of Rs.1,00,000- with default sentence u/s 307 along with 1 year Imprisonment and fine of Rs. 1,000- with default sentence u/s 323 and a 1 month Imprisonment and a fine of Rs. 500/- u/s 341 of the IPC.*
>
> *[5]. The Appellant then preferred an Appeal before the High Court, and during the pendency of the Appeal preferred an Application for Suspension of Sentence.*
>
> *[6]. The High Court, vide impugned order dated 20.09.2022 suspended the sentence of the Appellant, however imposed strict conditions of deposit of fine amount of Rs. 1,00,000/- along with a surety of Rs. 1,00,000/- and two bail bonds of Rs. 50,000/- each.*
>
> *[7]. These conditions imposed by the High Court for the grant of suspension of sentence are being challenged in the present Appeal.*
>
> *xxx xxx xxx xxx xxx*
> *xxx xxx xxx xxx*
>
> *[13]. In the present case, the Appellant has been granted bail by the High Court. However, while granting bail, the High Court has imposed the excessive conditions of a deposit of fine amount of Rs.1,00,000/- along with a surety of another Rs.1,00,000/- and two further bail bonds of Rs.50,000/- each.*
>
> *[14]. We are unable to appreciate the excessive conditions of bail imposed by the High Court. The fact that bail has been granted to the Appellant herein is proof enough to show that he is not to be languishing in jail during the pendency of the case.*
>
> *[15]. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was*

> *not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.*
>
> *[16]. As has been stated in the Sandeep Jain case supra [Sandeep Jain v. National Capital Territory of Delhi (2000) 2 SCC 66], the conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. In the present case, however, the excessive conditions herein have precisely become that, an antithesis to the grant of bail.*
>
> *[17]. Any other accused in a similar circumstance at this point would not be in custody, however, the present Appellant, because of the conditions imposed, has not been able to leave the languish of jail. Can the Appellant, for not being able to comply with the excessive requirements, be detained in custody endlessly? To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself."*

47. The jurisprudence behind custody due to financial constraints, as expounded by the Hon'ble Supreme Court in Guddan alias Roop Narayan (*supra*), is that a person's liberty was not restrained even in a case where the offences were serious and the sentence imposed was massive. Whereas an offence under Section 138 of NI Act is bailable, the case is based on complaint and not on an FIR, and the trial is summary, and the maximum sentence imposable is imprisonment which cannot extend beyond two years, and or fine, that cannot be more than double the cheque amount. Furthermore, in terms of Section 8(3) of the BNS, 2023, which is analogous to Section 65 of IPC, 1860, the maximum sentence for non-payment of fine cannot exceed imprisonment for six months.

48. In **Satyendra Kumar Mehra v. State of Jharkhand, (2018) 15 SCC 139, decided on 23.3.2018**, the Hon'ble Supreme Court holds,

> *"[1]. This appeal has been filed against an order of the High Court of Jharkhand at Ranchi in Criminal Appeal NO.176 of 2018 by which High Court by allowing I.A. No. 892 of 2018 filed by the appellant, has directed to grant suspension of sentence of the appellant. The High Court further directed that the appellant should also deposit the fine amount awarded before the court below. The appellant is aggrieved only against that part of the order by which the*

High Court directed the deposit of fine amount.

xxx xxx xxx xxx xxx
xxx xxx xxx xxx

[36]. We, however, make it clear that Appellate Court while exercising power under Section 389 Cr.P.C. can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the Appellate Court while exercising jurisdiction under Section 389 Cr.P.C,. The Appellate Court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine."

49. Sum and substance of the judgments in Bhagwan Rama Shinde Gosai (supra) and Guddan @ Roop Narayan (*supra*) is that imposition of heavy conditions, which the appellant is unable to meet, would amount to denial of bail to him, though it has been so ordered in view of the existing provision. The end result of doing so would be to keep the appellant in jail, even in cases where they could have enjoyed their liberty by coming out on bail under normal circumstances.

50. Unforgettable situation in all cases under Section 138 of the NI Act is that these proceedings are in a summary manner and the maximum sentence period is two years, which is most likely of the nature of simple imprisonment. Even though there may be a situation when there is no imprisonment period, and the sentence is in the form of a fine or compensation only.

51. In the light of the judicial precedents mentioned above, the answer to the third proposition is that the right of bail cannot be taken away by the Appellate Court, where final adjudication of the appeal is pending, due to non-compliance with the direction of paying 20% of the compensation amount under Section 148 of the NI Act. Whenever an Appellate Court directs a deposit under Section 148 of the NI Act and imposes conditions on the suspension of sentence, such conditions must be just conditions.

52. Here it requires to be understood that once the issue regarding deposit of 20% of the compensation or fine amount, payable under Section 148 of NI Act, is decided by the concerned Appellate Court by

following the spirit of the observations made in the judgments of Jamboo Bhandari (*supra*) and Muskan Enterprises (*supra*), and condition, if any, is imposed while suspending the sentence, the same would be deemed to be just and fair, and undoubtedly such condition requires its fulfillment at the end of the appellant, who seeks suspension of sentence.

53. The fourth proposition is, "Whether it is a pre-condition to deposit 20% of the compensation amount awarded by the Trial Court, for getting an appeal decided?

54. In **Noor Mohammed v. Khurram Pasha, (2002) 9 SCC 23: 2022-INSC-779, decided on 02.08.2022**, a three-member bench of the Hon'ble Supreme Court of India holds,

> *"[14]. The remedy for failure to pay interim compensation as directed by the court is thus provided for by the Legislature. The method and modality of recovery of interim compensation is clearly delineated by the Legislature. It is well-known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable.*
>
> *xxx xxx xxx xxx xxx*
> *xxx xxx xxx xxx*
>
> *[17]. The provision concerned nowhere contemplates that an Accused who had failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witnesses examined on behalf of the complainant. Any such order foreclosing the right would not be within the powers conferred upon the court and would, as a matter of fact, go well beyond the permissible exercise of power.*
>
> *[18]. Since the right to cross-examine the Respondent was denied to the Appellant, the decisions rendered by the courts below suffer from an inherent infirmity and illegality. Therefore, we have no hesitation in allowing this appeal and setting aside the decisions of all three courts with further direction that Complaint Case No. 244 of 2019 shall stand restored to the file of the Trial Court. The Trial Court is directed to permit the Appellant to cross-examine the Respondent and then take the proceedings to a logical conclusion. With these observations the appeal is allowed.*

> *[19]. It is also directed that 20% of the cheque amount namely Rs. 1,40,000/- must be deposited by the Appellant as interim compensation. The Registry is directed to make over a sum of Rs. 1,40,000/- to the Trial Court i.e. Senior Civil Judge & JMFC, Nagamangala, Karnataka. The amount shall be kept in deposit in Complaint Case No. 244 of 2019 and shall abide by such orders as the Trial Court may deem appropriate to pass. Rest of the amount along with accrued interest, if any, shall be made over to the Appellant. The Registry shall take out a Pay Order in the name of the Appellant which shall be handed over to the learned Counsel for the Appellant."*

55. In the afore-referred case, the right of cross-examination was denied on account of non-payment of the 20% cheque amount, which the Hon'ble Supreme Court has deprecated. Therefore, merely the non-deposit of the amount would not disentitle the accused from their substantive right of appeal either.

56. In **Vijay D. Salvi v. State of Maharashtra, (2007) 5 SCC 741: 2007 (4) R.C.R. (Criminal) 24**, **decided on 16.05.2007**, the Hon'ble Supreme Court holds,

> *"[3]. It appears that two complaint cases were filed against the appellant. In both the cases, he was convicted under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo one month's simple imprisonment in each of the cases. In one case, the appellant was directed to pay fine of Rs. 1,40,000 and in another Rs. 1,45,000/-; in default, he was directed to undergo further imprisonment for a period of three months. Against the said orders, appeals were preferred before the Sessions Court which directed the appellant to deposit the amount of fine but as he failed to deposit the same, the Appeals were dismissed. When the said order was challenged before the High Court in revision, similar order was passed on non-deposit of payment of fine and the revision applications have been dismissed. Hence, this appeal by special leave.*
>
> *[4]. In our view, neither the appellate court nor was the Revisional Court right in dismissing the appeals or revisions in the event of non-deposit of fine, but they should have disposed of the case on merits.*
>
> *[5]. Accordingly, the criminal appeal is allowed, impugned orders are set aside and the matter is remitted to*

> *the appellate court to dispose of the appeals on merits in accordance with law after giving opportunity of hearing to the parties. It is directed that the trial court shall take all coercive steps for realisation of fine awarded by the trial court against the appellant."*

57. From the judgments of Noor Mohammed (*supra*) and Vijay D. Salvi (*supra*), it is clear that non-deposit of 20% of the compensation or fine amount would not disentitle the accused from availing any of his substantive rights, including the right of appeal. The case of Vijay D. Salvi (*supra*) clearly answers the fourth proposition of law. Thus, to get the appeal decided, there cannot be any precondition for depositing the amount ordered under Section 148 of the NI Act by the Appellate Court. The fourth question is answered accordingly.

58. Although we have separately answered all the propositions, these propositions are interconnected, interwoven, and also require cumulative answers.

59. The offence under Section 138 of the NI Act is bailable, and when in a complaint, the summons is issued against an accused, bail is a right subject to the furnishing of bonds.

60. If the trial results in a conviction and consequent sentence, fine, and compensation, it is the free will of every convict, whether to undergo the sentence or to challenge it before the Appellate Court by filing an Appeal.

61. In the case of juristic persons such as limited liability companies, corporate entities, firms, LLPs, these can only be fined, and in the absence of a substantive sentence of imprisonment, there is no need for these entities to seek suspension of sentence.

62. In **Standard Chartered Bank & others v. Directorate of Enforcement & others, (2005) 4 SCC 530, decided on 05.05.2005**, a Constitutional bench of the Hon'ble Supreme Court holds (Majority view),

> *"[48]. No difficulty arises when we come to the stage of sentencing after a finding of guilt if the amount involved*

> *does not exceed Rs. one lakh. This difficulty arises only in cases where amount involved exceeds Rs. one lakh. Here it may be worthwhile to mention that the original FERA of 1947 did not prescribe a mandatory punishment of imprisonment and fine and therefore, such a situation was never faced. The 1973 Act sought to make the penal provision more severe and, therefore, prescribed that in case of high-valuation cases punishment by way of imprisonment and fine, both will be necessary. When the statutory intention was to make the graver offences punishable more severely, are we justified in holding that in such a situation the offender totally escapes liability? The law cannot be allowed to result in such absurdity. Such a view in my judgment will neither be just nor fair nor in accordance with the law. By a purely technical process of reasoning Corporations should not be allowed to go scot- free. There are several statutes making corporations liable for conviction which prescribe punishment by way of imprisonment as well as fine. An interpretation as suggested on behalf of the appellant will result in corporations escaping liability in all cases. Here we may point out that Section 48-A of the Monopolies and Restrictive Trade Practices Act, 1969 specifically makes corporations liable for prosecution while at the same time providing that in case of conviction they will be liable to imprisonment and also fine. In the face of this specific provision will corporations be allowed to escape liability on same reasoning as is being advanced here on behalf of appellants? In my view allowing corporations to escape prosecution for offences under Section 56 FERA for the only reason that corporations cannot be punished with imprisonment even though the punishment by way of fine which is also prescribed under the Section can be levied on them, will be defeating the statutory mandate regarding bringing to book offenders under FERA."*

63. The language of Section 148 NI Act neither restricts a convict's right to challenge their conviction, sentence, or compensation by filing an appeal, nor does it permit the Appellate Court to impose any prerequisites for the appeal to be admitted or decided. Section 148 of the NI Act, due to its non-compliance, does not explicitly prohibit the suspension of sentence or the hearing of the appeal. If the legislature intended such restrictions, they would have included and placed them, but they did not, which shows that it is not the legislature's intention for the suspension of sentence and the hearing of the appeal to be subject to compliance with Section 148 NI Act.

64. Neither Section 148 nor any other provision of the Negotiable Instruments Act prescribes any provisions for the suspension of sentence. Therefore, Section 430 BNSS shall apply. Additionally, neither Section 148 NI Act nor Section 430 BNSS places any specific restrictions on suspension of sentence. Instead, Section 430 BNSS has carved out a separate, most lenient category, and in cases where the sentence prescribed is up to three years of imprisonment, or when the offences in which an accused is convicted are bailable offences, the sentence is suspended by the trial Court/ convicting Court.

65. It is trite that the very purpose of Section 430 BNSS, 2023 which corresponds to S. 389 CrPC, 1973 is to restore the liberty curtailed post-conviction until the decision of the appeal challenging such conviction and sentence.

66. However, the legislative intention is clear from the language in which the provision is couched, "*in an appeal by the drawer against conviction under section 138*". Thus, Section 148 of the NI Act is attracted only when the convict files an appeal against the judgment and continues to apply during the time the said appeal is pending before the Appellate Court. It is explicitly clear that the Appellate Court assumes the jurisdiction to order a deposit under Section 148 NI Act only if the convict files an appeal before it, challenging the conviction and sentence, and the jurisdiction stays only during the pendency of such an appeal, and the Appellate Court's jurisdiction would eclipse on the decision of the appeal.

67. The legislative intent, as shown by the language of Section 148 NI Act, is to recover at least 20% of the compensation amount to provide some relief to the finance and trade sectors, thereby resuscitating their businesses. In the absence of the specific provision in the language of Section 148 that in the absence of deposit of 20% of compensation, neither shall any appeal be entertained nor the sentence shall be suspended, it shall be re-writing Section 148 of NI Act and Section 430 of BNSS, 2023, to treat the deposit of 20% as a prerequisite for filing an

appeal or for suspending the sentence.

68. In the absence of any appeal, Section 148 NI Act does not authorize the complainant to seek directions for such a deposit by filing any application, revision, or appeal for enhancement of the sentence of imprisonment, compensation, or fine, and the applicable remedy for the complainant would be Section 395 BNSS, 2023, which corresponds to Section 357 CrPC, 1973.

69. During the pendency of such an appeal, the Appellate Court is also competent to direct a deposit upon the filing of an application by the complainant. The absence of the words "application to be filed by the complainant" in Section 148(1) NI Act is insignificant because the general rules of drafting do not contemplate scribing those details that are a natural consequence and corollary of the rights provided in the statutes.

70. The words, "*(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.*" used in Section 148(2) are significant, because sixty days extendable by another thirty days, are granted to a convict to deposit only if the appeal is pending, because of the words, "*in an appeal by the drawer against conviction*" used in Section 148. Suppose before the expiry of the "sixty" extended to ninety days (sixty + thirty), the appeal itself is decided, then the Appellate Court shall also lose its jurisdiction to order such deposit.

71. However, if the appeal is not decided within 60 days, with a possible extension of 30 days, then the convict must comply with the directions, if any, to deposit the compensation amount.

72. When the convict challenges the conviction, sentence, or compensation by filing an appeal, the requirement to deposit 20% or more of the fine amount or compensation is not an absolute rule and is subject to exceptions mentioned in Jamboo Bhandari (*supra*) and Muskan Enterprises (*supra*), it can be reduced to below the statutory minimum of

20% or even waived in exceptional cases by assigning reasons.

73. The statutory intention under Section 148 NIA is that when the complaint has been allowed, which means, the stand taken by the complainant regarding the dishonor of a cheque, has been substantiated in the trial, and such a convict challenges that judgment by filing an appeal, then during the pendency of appeal, i.e. if the appeal is not decided within 60 days, extendable by 30 days, then the convict might be compelled to deposit the amount as was directed, by taking recourse to Section 395 BNSS, 2023.

74. Given the above, the deposit of a minimum 20% amount is not an absolute rule.

75. The legislative sanction given to an Appellate Court to direct an Appellant who has challenged the conviction, sentence, and compensation amount, by filing an appeal, to deposit at least 20% of the compensation amount under Section 148 of the Negotiable Instruments Act, 1881, miserably fails on the proportionality test. The provision of Section 148 is based on proclivities and thus arbitrary; on the contrary, as per the literal and practical meaning, it does not authorize the Appellate Court to suspend the sentence by mandatorily imposing a condition of deposit. The purpose Section 148 intended to achieve was to ensure that at least 20% of the compensation amount is handed over to the holder of the cheque whose debt or other liability amount was withheld due to the dishonor of the cheque. However, due to ambiguous drafting because of the absence of clear procedures for quick recovery, e.g., freezing bank accounts to the extent of the deposit, attachment of property, etc., has led to the recovery of the deposits by imposition of conditions while suspending the sentence in a bailable offence. Furthermore, as per Section 148 of the NI Act, the only individual who can be compelled to deposit is the person who issued the cheque in his personal liability. For corporate entities, signing and issuing a cheque is a ministerial act; the signatory is often an employee working for the company, with a limited liability partnership, association, body, or firm, and none of these can be forced to deposit due to vicarious

liability, not personal liability. Additionally, suspending the sentence based on the deposit does not affect juristic persons because they cannot be imprisoned and thus cannot seek a suspension of sentence or appeal, as these are statutory rights that cannot be subjected to the deposit. Given the above, the legislatures' dominant purpose has failed miserably on two counts; first it does not impact juristic persons, and second, individuals whose cheques are often security cheques taken by the money lenders, and these individuals face forced recoveries, which may discourage some from even challenging their convictions, before the first appellate Court itself, disconnecting rationality behind the legislative objectives that section 148 NI Act projected to achieve, by not affecting the juristic persons on the one hand and discouraging the impoverished on the other, and thus, miserably fails to strike a fair, rationale, and a reasonable balance between the obligations of elected representatives towards the society's poorest segments, who at the time of emergency situations when they are in urgent need of money, the financial institutions rarely give any loan or immediate loan and these poor people, who have a weaker community support, turn to the money lenders, who in turn, mostly keep blank signed undated cheques as security for unsecured debts.

76. Therefore, the simplest solution to all these issues is that whenever the deposits are expensive than the liberty, and the Appellate Courts are convinced that the convicts are not in a position to deposit and likely to forego their liberty even when the first appeal is yet to be decided, the Appellate Courts must make efforts to prioritize hearing appeals filed against the convictions under Section 148 NI Act and decide those preferably within sixty days of filing, and not later than ninety days, which clearly aligns with the legislators' intentions. However, the time of sixty days should be extended to the extent to which the decision of the appeal is delayed because of the complainant.

77. Registry to send copies of this order to all the Judicial Officers in the States of Punjab, Haryana, and the Union Territory of Chandigarh.

78. We express our gratitude to the in-depth assistance rendered by

learned Amicus Curiae Mr. Deepender Singh, Advocate.

79. The matters are sent back to the Single Bench.

(ANOOP CHITKARA)
JUDGE

(SANJAY VASHISTH)
JUDGE

24.09.2025
Jyoti Sharma/Pkapoor

Whether speaking/reasoned	YES
Whether reportable	YES