

CA no.505/2025
Kevin Kapadia Vs. Ajit Sinha
15.10.2025

Fresh criminal appeal received by way of assignment. It be checked and registered.

Present: Sh. Uttam Singh, Ld counsel for appellant.
Son of appellant in person.

The present appeal has been filed against the Judgment dated 04.08.2025 and Order on Sentence dated 10.09.2025 of Ld. JMFC (NI Act), Digital Court-02, South Saket Courts, New Delhi in CC NI Act No. 2807/2021.

Application for suspension of sentence dated 10.09.2025 has also been annexed with the present criminal appeal.

I have heard the submissions of Ld. Counsel for the appellant-convict on application for suspension of sentence and grant of bail.

Vide Impugned Judgment dated 04.08.2025, the appellant has been convicted for offence punishable under Section 138 NI Act. Vide Order on Sentence dated 10.09.2025, the appellant-convict has been sentenced to till rising of the court and to pay a fine of Rs.1,47,00,000/- to the complainant within 60 days from the date of order on sentence as compensation failing which he shall undergo simple imprisonment of 05 months in default.

In the facts and circumstances of the case and the submissions put forth by Ld. Counsel for appellant-convict, the operation of Judgment dated 04.08.2025 and Order on Sentence

dated 10.09.2025 is stayed till the disposal of the present appeal.

Further, as per Section 148(1) of NI Act, the hearing of appeal is subject to deposit of 20% of the fine amount in the light of the following judgments :

(i) In case titled as **G. K. Construction Company Vs Balaji Makan Samagri Stores** in **S. B. Criminal Misc(Pet) No. 189/2022 dated 04.03.2022** it was held by the **High Court of Rajasthan** as under :

“21. Most importantly, in Surinder Singh Deswal vs. Virender Gandhi reported in (2019) 11 SCC 341, Hon'ble the Supreme Court while dealing with the interpretation of the word 'may' in Section 148(1) of the Act has held thus:

"9. 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 Code of Criminal Procedure 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 Section 138 of the N.I. Act."

23. Per contra, in the present case the dispute is civil in nature with criminal overtones and unlike section 438 of the Code, there exists a specific statutory requirement under section 148 of the Act for a deposit of minimum 20% of the fine amount during pendency of an appeal against conviction under section 138 of the Act. Petitioner's reliance on the case of Dilip Singh (supra) is

therefore, absolutely
misconceived.”

(ii) In case titled as **T. K. Sajeevan Vs Francis T. Chacko & Anr.** in OP (Crl.) No. 348 of 2019 dated 08.08.2019, it was held by the **High Court of Kerala** as under :

“5. The learned counsel has contended that since the word 'may' is there in Section 148 N.I. Act, the deposit contemplated is only a discretionary relief. But in view of the object of the Legislature while incorporating Section 148 into N.I. Act, the word 'may' will have to be read as 'shall'. The imposition of payment contemplated under Section 148 N.I. Act cannot be restricted to some prosecutions and evaded in other prosecutions. Since the amount directed to be deposited being compensation, undoubtedly, it is liable to be ordered to be deposited irrespective of the nature of the prosecution. Therefore, the word 'may' can only be taken to OP(Crl.). No.348 OF 2019 have the colour and meaning of 'shall' and there is no scope for exercise of discretion. It is something to be imposed irrespective of the nature of prosecutions preferred under Section 142 N.I. Act. The contention of the learned counsel on that basis is repelled for the reason.”

Recently the **Supreme Court of India** in **Jamboo Bhandari Vs M. P. State Industrial Development Corporation**

Ltd. & Ors. dated 04.09.202023 in CrI. Appeal No(s) 2741 of 2023 (@ SLP (CrI.) No(s). 4927 of 2023 and CrI. Appeal No (s). 2742 of 2023 (@ SLP (CrI.) No(s). 6336 of 2023) has held in paragraph 10 that deposit of minimum 20% amount is not an absolute rule and an exception can be accommodated.

Ld. Counsel for appellant seeks to file an application for waiver of deposit of 20% of the awarded amount before the next date of hearing. Request is allowed.

In these circumstances, the appellant-convict is also admitted to bail during the suspension of sentence on furnishing personal bond-cum-surety bond in sum of Rs.50,000/- each with one surety each in the like amount to the satisfaction of Ld. Trial Court within three days.

Application for suspension of sentence stands disposed of accordingly.

Issue notice of the present appeal to the respondent for next date of hearing on filing of PF/speed post/Authorized Courier as well as through electronic mode within seven working days.

Trial Court Record be also summoned for next date of hearing.

Now to come up for appearance of respondent and further consideration on 02.12.2025.

Copy of this Order be dispatched to Ld. Trial Court for information. Copy of this Order be also given *dasti* to appellant/Ld. Counsel for convict-appellant.

(NAVJEET BUDHIRAJA)
ASJ-02/SOUTH/SAKET COURTS
NEW DELHI/15.10.2025