

GJVD220004172023



ORDER BELOW EXH.1 IN
Cri. Appeal NO.29/2023

APPEARANCE:

Ld. Advocate Shri. A. H. Makrani for the appellant.

Ld. APP for the State.

[1] The present Appeal has been filed by the appellant against the judgment dated 19.10.2023 passed by the Ld. Additional Chief Judicial Magistrate, Dabhoi in CC No.2112/2018 vide which appellant/accused Parmar Anilkumar Ramjibhai has been convicted for the offence punishable under section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as NI Act) and he has been sentenced to undergo simple imprisonment for one year and also to pay compensation of Rs.2,50,961/- to the complainant of CC No.2112/2018 and in default of payment of fine/compensation, the appellant is to further undergo a simple imprisonment of one year.

[2] The perusal of the record of the present Appeal shows that after filing of the Appeal vide order dated 02.12.2023 passed below Exh.4, the Ld. Predecessor of this Court had suspended the sentence passed in CC No.2112/2018 till the disposal of the present Appeal and the appellant was also granted bail on furnishing a personal bond of Rs.10,000/- with one surety of the like amount on the condition that the appellant shall deposit 20% of the compensation amount before the Nazir of this Court till next returnable date.

[3] Section 148 of the NI Act provides about the powers of Appellate Court to order payment pending the Appeal against the conviction. This provision provides that in cases of Appeal against order of conviction for the offence pending u/s.148 of NI Act, the appellate Court may order the appellant to deposit minimum of 20% of the

compensation awarded by the Ld. Trial Court, within 60 days from the date of order. Section 148(2) of the NI Act further provides that the appellate Court may extend that time for above 30 days on sufficient cause being shown by the appellant. It is apparent that the direction to deposit 20% of the compensation amount was issued in view of Section 148 of the NI Act.

[4] The perusal of the record shows that the appellant has not deposited the 20% amount of the compensation till date. In the instant case, the order of deposit the 20% amount u/s.148 of NI Act was passed by Ld. Predecessor of this Court on 02.12.2023 but the appellant has failed to comply with that order till today. Further, the appellant has not been appearing before this Court. It had been appraised by the Ld. Advocate for the appellant that he has been in judicial custody in a NDPS case and on the last date of hearing a production warrant had been issued to the Jail Authorities of Vadodara to produce accused before this Court in the present Appeal but the reply was filed by the Jail Authorities that the appellant was on interim bail from 16.07.2025 to 27.07.2025 so they cannot produce him. The appellant has not appeared on the last date of hearing which was on 25.07.2025.

[5] On the last date of hearing the Ld. Advocate for the respondent No.2 has moved this application vide Exh.17 and prayed for rejection of the present appeal. The Appeal has already been admitted before this Court and therefore it cannot be rejected or dismissed merely on the ground of non-appearance of the appellant. As far as question of non-compliance of condition imposed in order passed below Exh.4 is concerned, this Court is of the view that the period which is provided u/s.148 of NI Act to deposit the amount has elapsed. Further, u/s.148(2) of the NI Act, said period can be extended up to 30 days but in the instant case, more than 1 year has elapsed since passing the order below Exh.4, but still the appellant has not deposited the complete 20% of the compensation amount. In the judgment of *Surinder Singh Deshwal vs. Virendra Gandhi*, Hon'ble Supreme Court had discussed the effect of not depositing the amount in pursuance of section 148 of N.I. Act.

[6] The sentence passed against the appellant/accused in CC No.2112/2018 had been suspended and bail was granted to him by the Ld. Predecessor of this Court with the condition that he will deposit 20% of the compensation amount before the Nazir of this Court. The appellant has violated this mandatory condition. Therefore, the relief granted vide order dated 02.12.2023 passed below Exh.4 in the present case is withdrawn and the suspension of the sentence is removed and the bail bond and surety bond of the appellant are forfeited.

[7] The appellant is not present before this Court today, therefore, the Ld. Trial Court is directed to issue necessary warrant against the appellant for taking him into the custody to undergo the sentence passed in CC No.2112/2018.

[8] A copy of this order be sent to Ld. Trial Court for compliance. Now fixed for 29.07.2025.

[9] Let a fresh Production Warrant be issued to Jail Authorities, Vadodara Central Jail to produce appellant - Parmar Anilkumar Ramjibhai in this case on 29.07.2025, if he is in custody and lodged in Vadodara Central Jail in any other case.

DABHOI
DATE : 25/07/2025

Sd/-
(RAHUL SHARMA)
4th ADDITIONAL SESSIONS JUDGE,
VADODARA @ DABHOI.
CODE No. 01588.