

MHBU010009822025



Criminal Appeal No.53/2025,

Ravindra Devidas Sabale

Vs.

Sau. Surekha Kishor Agrawal & Anr.

Order below Exh.5.

(Dated : 21-08-2025)

1] This is an application for suspension of sentence passed by learned Additional Chief Judicial Magistrate (2nd Court), Buldana in Summary Criminal Case No.1394/2023, vide judgment and order of conviction dated 15.07.2025. The appellant/original accused is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 vide Section 255(2) of the Code of Criminal Procedure, 1973 and sentenced to suffer rigorous imprisonment for three months and pay compensation of Rs.15,25,000/-, in default to suffer simple imprisonment for one month.

2] It is contended on behalf of the appellant that he has preferred an appeal challenging the validity of the order passed by the Additional Chief Judicial Magistrate (2nd Court), Buldana on the grounds mentioned in the appeal memo. Considering the facts of the case, there is every possibility of the appellant being acquitted in the matter. The appellant has been convicted by evading discrepancies.

3] It is further contended that the appellant deserves an opportunity to defend the case and refute the claim of the original complainant. The appellant is having very good prima facie case to succeed in the above matter. To proceed with the appeal, it is very much necessary to suspend the sentence and order passed by the learned Magistrate. The appellant is the only earning member of his family. On these and amongst other grounds, it is prayed for suspension of the sentence of conviction.

4] The respondent No.1 vehemently resisted the application by filing say at Exh.13. It is contended that the application is not maintainable as the appellant has failed to show any sufficient ground for the grant of stay of conviction or sentence. The learned trial Court has rightly convicted the appellant after full appreciation of facts, documents and legal evidence. The appellant has not deposited any part of the compensation awarded by the learned trial Court. The complainant has already suffered due to non-payment of a legally enforceable debt by the appellant. No single penny has been received by the complainant. It is therefore, prayed that the powers under Section 148 of the NI Act may be exercised and the appellant may be directed to deposit at least 20% of the compensation amount, as a condition for suspension of sentence.

5] The learned Public Prosecutor Mr. V. L. Bhatkar for respondent No.2/State, by filing say at Exh.11, has left the matter to the discretion of the Court.

6] Heard the learned Advocate Mr. R. W. Badge appearing for the appellant, learned Advocate Mr. Gajanan Paithane for respondent No.1 and Mr. V. L. Bhatkar for respondent No.2/State. Perused the application (Exh.5), say filed by respondents and the material placed on record.

7] The learned Advocate Mr. R.W. Badge urged with a degree of vehemence that there is every possibility to succeed in the appeal and to set aside the the impugned judgment and order passed by the learned Magistrate. Thus, the appellant has made out an exceptional case for suspension of the sentence. In view of the peculiar facts and circumstances of the case, he has prayed for suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount.

8] In opposition to this, the learned Advocate for respondent No.1 submitted that he has not received a single penny from the appellant. Therefore, no exceptional case is made out for relaxation of condition as contemplated under Section 148 of the NI Act.

9] Before adverting to deal with the contentious issue, it is necessary to refer to the relevant provision of the NI Act.

“148(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 per cent 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] On perusal of the aforesaid provision, it starts with a non-obstante clause stating therein that “notwithstanding anything contained in the Cr.P.C., 1973”, in an appeal which has been filed

against the conviction under Section 138 NI Act, the appellate Court has the power to ask the applicant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation as awarded by the trial Court.

11] At this juncture, a profitable reference can be made to the ruling of the Hon'ble Supreme Court in the case of *Surinder Singh Deswal and Ors. Vs. Virender Gandhi*", reported in AIR 2019 SC 56, wherein in para-9 it was held that, '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 realize 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'.

12] From the perusal of the aforesaid judgment, it is seen that the applicability of the provision under Section 148 of the NI Act is mandatory and it envisages deposit of minimum 20% amount towards suspension of sentence. On factual matrix, the learned trial Court has recorded finding that the cheque was issued towards legally enforceable debt. It is imperative to note that exceptional circumstances are not made out by the appellant in his application. Therefore, I am not impelled to accede the submission of the learned Advocate for the appellant that it is not mandatory to direct the

applicant to deposit 20% amount of compensation towards suspension of sentence and the case is made out for suspension of sentence without imposing such a condition.

13] It is pertinent to note that the appellant has challenged the judgment and order of conviction by filing Criminal Appeal. If the sentence is not suspended, then very purpose of the first appeal would be frustrated. Having regard to the entire gamut of the circumstances, including the nature of the offence and punishment provided for the same, I am of the considered view that this is a fit case for suspension of the sentence. With this, I am inclined to pass the following order:

ORDER

- (1) Application (Exh.5) is hereby allowed.
- (2) The sentence of imprisonment and compensation imposed on the appellant vide judgment and order dated 15.07.2025 passed in Summary Criminal Case No.1394/2023 by Additional Chief Judicial Magistrate (2nd Court), Buldana, under Section 138 of the Negotiable Instrument Act, 1881, is hereby suspended till the disposal of appeal on the condition of depositing minimum 20% amount of the total compensation amount in the trial Court, within 60 days from the date of this order.
- (3) The appellant be released on PR bond in a sum of Rs.15,000/- (Rs. Fifteen thousand only) with surety in the like amount.
- (4) The appellant is directed to attend the dates regularly.
- (5) Inform the trial Court.

Dated : 21-08-2025.

(R. N. Rokade)
Sessions Judge, Buldana.

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