

**Order below Exh. 9 in Criminal Appeal No. 31 of 2019**

1. Appellant has challenged the impugned judgment and order of conviction passed in S.C.C. No. 115/2016 by the Ld. J.M.F.C., Dahiwadi dated 20/9/2019 for the offence punishable under section 138 of N.I. Act and sentence awarded thereunder.

2. The Ld. Advocate for appellant submitted that the Hon'ble Supreme Court of India in recent judgment passed on 29/5/2019 in the matter of **Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender Gandhi**, clarified the retrospective applicability of the amended section 148 of the N.I. Act and confirmed that the new section 148 of the NI Act is applicable to cases where the criminal complaints under section 138 of the NI Act were filed prior to the NI Amendment Act.

3. The Ld. Advocate for appellant further relied upon section 148 of NI Act, which states that,

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction u/s 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 subsection shall be in addition to any interim compensation paid by the appellant under section 143A.”

4. Section 143A is applicable to the pending proceeding u/s 138 wherein the Magistrate has power to award interim compensation, whereas amended section 148 is applicable to the appellate Court during pending appeal against conviction. In view of ratio laid down

by the Supreme Court, there is retrospective applicability of amended section 148 of NI Act.

5. In view of amended section 148 of NI Act, powers of the Appellate Court to pending appeal against conviction. In view of the said provision, there is minimum limit of 20% of the fine or compensation, however no maximum limit is prescribed. In the case at hand, the Ld. Trial Court has ordered to the appellant accused to pay fine of Rs. 1,20,000/- and out of fine, Rs. 1,20,000/- awarded to the respondent complainant towards compensation. The appellant has not deposited fine of Rs. 1,20,000/- before the Ld. trial Court. Considering the provisions under N.I. Act and section 389 of Cr.P.C., the following order will meet the ends of justice.

**ORDER**

1. Application Exh. 9 in Criminal Appeal No. 31 of 2019 is hereby allowed as under.
2. Sentence awarded in impugned judgment and order of conviction dated 20/9/2019 in S.C.C. No. 115/2016 passed by the Ld. J.M.F.C., Dahiwadi is hereby suspended till disposal of this appeal, subject to deposit fine of Rs. 1,20,000/- with the Ld. Trial Court on or before 10/12/2019.
3. If the appellant fails to deposit fine of Rs. 1,20,000/- within the above-said time limit, the above-said order of suspension of sentence stands vacated automatically and the Ld. Trial Court is to issue conviction warrant against the appellant/accused to serve the sentence as per the impugned judgment and order.
4. Appellant be released on furnishing P.R. Bond of Rs.15,000/- with like amount of surety, till 10/12/2019, subject to

compliance of above condition of payment of fine before the  
Ld. Trial Court.

5. Inform to the Ld. Trial Court accordingly.

**Date : 19-11-2019.**

**(R.K. Malabade)**  
**Addl. Sessions Judge, Vaduj.**