

GAHC010116482024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./679/2024

MD. H M MURTAZA LASKAR
S/O LATE MASSADAR ALI LASKAR, R/O VILL- EAST GOBINDAPUR, P.O.-
GOBINDAPUR, P.S.-SILCHAR, DIST-CACHAR, ASSAM, PIN-788101

VERSUS

EUREKA MULTI DEVELOPER
REPRESENTED BY MD. HABIBULLAH, S/O BADRUL HOQUE, R/O VILL-
EAST GOBINDAPUR, P.O.-GOBINDAPUR, P.S.-SILCHAR, DIST- CACHAR,
ASSAM, PIN-788101

Advocate for the Petitioner : Mr. O. Laskar

Advocate for the respondent(s) : Mr. N. Kothari

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **27.02.2026**

Whether the pronouncement is of the : **NA**
operative part of the judgment?

Whether the full judgment has been : **Yes**
pronounced?

**BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR**

JUDGMENT & ORDER (ORAL)

Date : 27-02-2026

(Rajesh Mazumdar, J.)

Heard Mr. O. Laskar, learned counsel for the petitioner and also heard Mr. N. Kothari, learned counsel appearing for the sole respondent.

2. The crux of the present criminal petition is the order dated 16.03.2024 passed by the Court of the learned Addl. Sessions Judge No.5, Kamrup (M) at Guwahati in Criminal Appeal No. 27/2024 by which the appellant herein was directed to pay 20% of the total compensation amount as quantified in the judgment & order dated 15.02.2024 passed in C.R Case No. 1302/2016 in the proper Government Head, through the learned CJM, Kamrup (M), Guwahati and thereafter to submit deposit receipts. The execution of the judgment of the Court of first instance was kept in abeyance till 25.04.2024.

3. The concerned appeal arises out of the judgment & order dated 15.02.2024 passed by the learned CJM, Kamrup (M), Guwahati in C.R Case No. 1302/2016. This Court has noticed that the trial proceeded for a period of nearly 8 years from the date it was instituted. This Court has been informed by the counsels in tandem that even though no interim orders had been passed in this criminal petition, due to its pendency, the appeal has not yet proceeded with the Appellate Court respecting the pendency of the litigation before this Court.

4. Mr. O. Laskar, learned counsel for the petitioner has submitted that the impugned order dated 16.03.2024 is liable to be interfered with by this Court to the

extent that the appellant/accused was directed to pay 20% of the total compensation amount as passed in the judgment & order dated 15.02.2024, since no reason has been given as to why the learned Appellate Court had come to a conclusion that it was necessary for the appellant to have deposited 20% of the compensation amount prior to the appeal being taken up for consideration.

5. The learned counsel for the petitioner has placed reliance on a judgment and order dated 21.3.2024 passed by the High Court of Kerala at Ernakulam in Crl. MC no 1077/2024 (P Sreenevasan versus Sini Shelly) reported in 2024 SCC Online Ker 1361, to emphasize that the Courts have time and again emphasized that the the appellate Court would be legally obliged to furnish reasons for its decisions either requiring the payment of 20% of the compensation or fine awarded by the trial court or to waive such deposit. The learned counsel for the petitioner has submitted that in the absence of any such reason being discernible in the impugned order, it would deserve an interference to such extent.

6. Mr. N. Kothari, learned counsel for the sole respondent has on the other hand, drawn the attention of this Court to the case **of Jamboo Bhandari -versus- Madhya Pradesh State Industrial Development Corporation Limited & Others**, reported in **(2023) 10 SCC 446**, where the Apex Court has held as under;

“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. The learned counsel for the respondent has submitted that the reasons are to be given by the Appellate Court only when a relaxation is given for the imposition of the condition of pre deposit of 20% of the compensation amount is granted by the appellate court and no reasons are required to be given when the appellate court proceeds to impose the pre deposit 20% as a pre-condition to proceed further in the appeal.

8. The learned counsel for the respondent has also placed reliance on the judgment of this Court in Criminal Petition No. 87/2019, which was disposed of on 13.05.2020, wherein the Court had framed the following questions;

“2. The petitioner in this criminal petition filed under Section 482, Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’ and/or ‘CrPC’, for short) has challenged the legality and validity of an order dated 17.12.2018 passed by the learned Additional Sessions Judge (F.T.C.), No. 3, Kamrup (M), Guwahati in Criminal Appeal Case no. 191/2018. Two of issues that have arisen for consideration in this case are : firstly, whether Section 148 of the Negotiable Instruments Act, 1881 (hereinafter referred as ‘the Act’, for short) which had come in force w.e.f. 01.09.2018 by the Amendment Act 20 of 2018 is retrospective or prospective and secondly, whether an appellate court in an appeal preferred against a judgment and order of conviction and sentence for an offence under Section 138 of the Act is to assign any reason while directing the appellant to deposit an amount in terms of the provisions of Section 148 of the Act.

4. It is that part of the order whereby the appellate court has directed the convicted accused-appellant i.e. the petitioner herein to deposit 20% of the compensation amount of Rs. 18,00,000/- within 18.02.2019, which is assailed in this criminal petition.

10. In so far as the submission advanced on behalf of the petitioner as regards discretion available to the appellate court under Section 148 of the Act to make a departure from the condition of deposit of not below 20% of the fine/compensation amount awarded by the learned trial court is concerned, it is observed already in the aforesaid decisions in *Surinder Singh Deswal (supra)* the use of the word "may" in the amended Section 148 of the Act is to be construed as a "rule" or "shall". Thus, what can be culled out from the said observation is that the direction to deposit minimum of 20% of the fine or compensation awarded by the trial Court is "rule". If the appellate court decides to dispense with the condition of deposit of minimum 20% of the fine or compensation awarded by the trial court then it has to assign special reasons for dispensing with such deposit. Thus, a direction to deposit a part of the fine or compensation amount awarded by the trial court is the "rule" and a direction to make any relaxation of such a condition is an exception, which can only be passed assigning special 2020:GAU-AS:5401 Page No. 9/10 reasons by the appellate court.

11. On a query made by this Court, the learned counsel for the petitioner has submitted that no separate application under Section 389 of the Code was filed when the appeal was presented and the appeal was heard for admission on 17.12.2018. What was available before the appellate court on that day was the memorandum of appeal presented by the petitioner. The materials before the appellate court available on that date were the grounds taken in the memorandum of appeal. On perusal of the memorandum of appeal, furnished by Mr. Mitra, it is found that no special reasons or circumstances had been cited therein for the appellate court to consider the matter of dispensing with the condition to deposit a part of fine or compensation amount in terms of Section 148 of the Act. The grounds taken in the memorandum of appeal are, in general, pertaining to the impugned judgment and order of the learned trial court regarding failure to appreciate the evidence in the right and proper perspective. It is not necessary for the appellate court to find out any special reason on its

own to make a departure from making a deposit of less than 20% of the fine or compensation awarded, under Section 148 of the Act. Non-assignment of any reason while directing deposit of 20% of the total compensation amount awarded by the trial court, has not made not the order dated 17.12.2018 of the appellate court infirm in any manner. Thus, the submission advanced by the learned counsel for the petitioner does not merit consideration.

12. In so far as the other limb of submission of the petitioner is concerned, it is a settled position of law that an appeal, in essence, is continuation of the proceeding of the original court. Ordinarily, the appeal jurisdiction involves a re-hearing on law as well as on facts when the same is invoked by an aggrieved person. The appellate jurisdiction is co-extensive with the original court's jurisdiction as for appraisal and appreciation of evidence. It is free to redress the errors, if any, committed by the trial court and to reach its own findings on law and facts. The grounds taken up by the petitioner as the appellant in Criminal Appeal Case no. 191/2018 would be obviously be considered by the appellate court. The appellant is at liberty to advance his submissions as regards the discharge of the debt or liability by him which he had advanced before the trial court which, according to him, were not properly 2020:GAU-AS:5401 Page No. 10/10 considered by the trial court. This Court in exercise of its jurisdiction under Section 482 of the Code while considering the legality and correctness of the impugned order dated 17.12.2018, does not function as a court of appeal to appreciate and evaluate the evidence adduced by the parties before the trial court. Therefore, the second limb of submission of the petitioner requires no consideration and does not merit acceptance.

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9. In such circumstances, when this Court has on earlier occasions rejected the plea that reasons are required to be given for imposing the per-condition of depositing 20% of the compensation amount upon the appellant for having the appeal proceeded

with, neither do I see any reason to differ nor any reason to keep the present petition pending.

10. In the present case, it is noticed that although this Court had not imposed any impediment in the appeal due to the pendency of the criminal petition, the appeal has not proceeded any further. This has not harmed the proceeding in any manner since till the time the pre-deposit is made by the petitioner herein, who is the appellant in Criminal Appeal No. 27/2024, the appeal would not in any case proceed. Rather, the dismissal of the appeal due to non-compliance of the orders of the Appellate Court has been delayed.

11. It is apparent that the interim relief granted by the Appellate Court in suspending the execution of the judgment of the Trial Court has interfered in the respondent no. 2 availing the benefit of a fruitful prosecution.

12. The provisions of the N.I Act, as observed by the Apex Court, have been amended from time to time to provide, inter-alia, speedy disposal of the cases relating to the offence of dishonour cheques, to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheque and due to easy filing of the appeals and obtaining stay in the proceedings, the injustice 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 can be mitigated. Having observed that delay compromises the sanctity of the cheque transactions, Parliament thought it fit to amend section 148 NI Act. Therefore, a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in section 148 NI Act and also section 138 NI Act (as observed in **Surender Singh Deswal @ Colonel &**

Others -versus- Virender Gandhi, reported in **(2019) 11 SCC 341**).

13. In the present case, it is observed that the pendency of this criminal petition has, in fact, harmed the early disposal of the appeal and delayed the probability of the holder of a dishonoured cheque in getting his due payment. True it may be that in the appeal, the appellant may succeed but that can be no ground for keeping a proceeding pending before the learned Appellate Court when no stay has been obtained in this Criminal Petition.

14. In the facts and circumstances of the case, this Court does not find it to be a fit case to interfere with the condition imposed by the learned Appellate Court while requiring the deposit of 20% of the compensation amount.

13. This Court has however taken into consideration the submission of the learned counsel for the petitioner that the petitioner is having genuine difficulty in accumulating the amount directed by the learned Appellate Court to be deposited. If that be so, it would be a matter for the appellant to pray before the learned Court and it would be for the Appellate Court to decide. The petitioner has prayed for liberty to file an application for condonation of the deposit. It is provided that in the event any such application is filed on or before 02.04.2026, the same shall be disposed of summarily by the learned Appellate Court in accordance with law. It is made clear that this Court has not expressed any merit on the prayer made by the petitioner but has set a time limit only as an endeavour to curtail the opportunities of causing delay in the matter.

14. It is made clear that in the failure of the petitioner to appear before the learned

Appellate Court within 02.04.2026 and/or also on the failure of the petitioner to comply with such orders as have been or may be passed by the learned Appellate Court, the learned Appellate Court would be at liberty to view the same as attempts of the petitioner to delay the proceedings and would also be entitled to pass appropriate orders allowing execution of the orders passed by the learned Trial Court.

15. This Criminal petition stands disposed.

JUDGE

Comparing Assistant