IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 2008 of 2026

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ZAHIR IQBAL LALIWALA

Versus

M/S. POWER PLAZZO PVT. LTD. (POWER PALAZZO PRIVATE LIMITED) THROUGH KAVITABEN LATE VIPULBHAI SHAH & ANR.

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Appearance:
MR ARJUN M JOSHI(11247) for the Applicant(s) No. 1
DR.ABHISST K THAKER(7010) for the Respondent(s) No. 1
MS.C.M.SHAH, APP for the Respondent(s) No. 2

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 24/07/2026

ORAL ORDER

1. Rule. Learned advocate Dr. Abhisst K. Thaker waives service of notice of rule for the respondent no.1 and learned APP Ms.C.M.Shah waives service of notice of rule for the respondent no.2 – State.

2. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final disposal.

3. The present revision application under Sections 397 and 401 of the Code of Criminal Procedure is directed against the common order dated 08.05.2026 passed by learned 4th

Additional Sessions Judge, Ahmedabad (Rural) at Navrangpura in Criminal Appeal No. 206 of 2026 below Exh.5 and Exh.7, whereby, the sentence imposed upon the present applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as 'the N.I.Act') has been suspended pending the criminal appeal and the applicant has been enlarged on bail subject to the condition of depositing 10% of the cheque amount.

4. The original complainant M/s. Power Palazzo Private Limited through its authorized person filed a criminal complaint before the Court of the Chief Judicial Magistrate, Ahmedabad (Rural) at Navrangpura, which came to be registered as Criminal Case No. 4763 of 2019. The learned Additional Chief Judicial Magistrate, C.B.I. Court No.1, Ahmedabad (Rural) was pleased to pass the order dated 03.04.2026 convicting the original accused no.1, M/s. Home Run Sports Pvt. Ltd. and the applicant and sentenced the present applicant – original accused no.3 being a director of the original accused no.1 – company to simple imprisonment of one year and to pay Rs.14,57,592/- as compensation to the original complainant within a period of 30 days and, in default, simple imprisonment of three months for the offence punishable under Section 138 of the N.I.Act. The learned Trial Court was pleased to acquit the original accused no.2 for the offence under Section 138 of the N.I.Act.

4.1. Being aggrieved and dissatisfied with the judgment and order passed by the learned Additional Chief Judicial Magistrate, C.B.I. Court No.1, Ahmedabad (Rural), the present applicant before the Sessions Court, Ahmedabad (Rural) at Navrangpura filed Criminal Appeal No. 206 of 2026 along with an application at Exh.5 seeking suspension of execution of sentence and an application at Exh.7 seeking stay on the order of conviction passed against the present applicant.

4.2. The learned 4th Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad at Navrangpura, was pleased to pass a common order below Exh.5 and Exh.7 which is reproduced hereunder:

> **1.** Applications at Exhibits:5 and 7 are hereby allowed.
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> **2.** Execution and implementation of sentence imposed vide order dated 03.04.2026 passed by the Ld. Additional Chief Judicial Magistrate, CBI Court No. 1, Ahmedabad [Rural] in

Criminal Case No.4763 of 2019 is hereby suspended till final disposal of the present appeal, subject to deposit of 10% of cheque amount by the appellant with the Ld. Trial Court within 60 days from the date of passing of this order. Applicant/appellant-Zahir Iqbal Laliwala is hereby ordered to be released on bail subject to furnishing afresh personal bond of Rs.25,000/- [Rupees Twenty Five Thousand Only] with one surety of like amount subject to satisfaction of Ld. Magistrate.

4. The original complainant is given liberty to withdraw the amount deposited by appellant on proper identification, in view of Section 148 of N.I.Act subject to final outcome of the appeal.

5. It is further directed that appellant/applicant shall appear on each and every date of hearing before this court, unless exempted as per provisions of Law and shall give correct permanent residential address, mobile number, identity proof to the trial Court.

6. Applicant/appellant shall not leave territory of India without prior permission of the court and shall intimate to the court and/or the concerned at the time of leaving the territory of State of India. Present applications stand disposed of accordingly.

7. Copy of this order may be kept in other application(s) also."

5. Heard learned Senior Advocate Mr. Mihir Joshi assisted by learned advocate Mr Arjun M. Joshi for the applicant, learned advocate Mr. Abhisst Thaker for the respondent no. 1 – original complainant and learned APP Ms.C.M.Shah for the respondent no. 2 – State.

6. Learned Senior advocate Mr Mihir Joshi for the applicant submits that the impugned order dated 08.05.2026 determines the statutory obligations under Section 148 of the

N.I.Act and affects the applicant's valuable right to suspension of sentence pending appeal. The challenge concerns the legality and jurisdictional correctness of the order and is unsustainable as it imposes a statutorily impermissible condition of depositing 10 per cent of the cheque amount. Learned Senior Advocate further submits that the language of Section 148 of the N.I.Act, offers a discretion to the Appellate Court in imposing a condition of depositing a sum as against the compensation awarded by the Trial Court, therefore, an Appellate Court may or may not impose such a condition. However, Section 148 of the N.I.Act also makes it impermissible for the Appellate Court to impose a condition which requires a deposit of less than 20 per cent of the compensation so awarded. Learned Senior Advocate further submits that once the Appellate Court was satisfied that the statutory condition ought to be relaxed, it was bound to give full effect to the law laid down by the Apex Court regarding the exception in the case of **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors.** reported in **(2023) 10 SC 446**. A partial and impermissible 10 per cent deposit defeats the very object of that exception, to ensure that the deposit condition, which is that it does not operate unjustly or hinder the Appellant's right to challenge the conviction. Imposing 10 per cent on the applicant who has demonstrated hardship sufficient to displace the 20 per cent norm continues to operate as a fetter on, and partial denial of, the right of appeal.

7. Learned Senior advocate Mr Mihir Joshi for the applicant, relying upon the decision passed by the Apex Court in the case of Jamboo Bhandari (Supra), submits that the order directing deposit of only 10% is contrary to the mandate contained in Section 148 of the N.I.Act. It is submitted that the Apex Court has held that ordinarily the Appellate Court is required to direct deposit of a minimum of 20% of the fine or compensation awarded by the trial court and that any departure from the statutory minimum can be made only in exceptional circumstances, for which reasons are required to be specifically recorded. It is, therefore, submitted that the impugned order deserves to be set aside.

8. Learned advocate Dr.Abhisst Thaker for the respondent no.1 – original complainant and learned APP Ms.C.M.Shah for the respondent no.2 – State have jointly supported the impugned order to the extent that the Appellate Court has exercised its discretion while suspending the sentence and have submitted that the matter was argued at length before the learned Sessions Court and thereafter, the impugned order was passed. However, have submitted that in light of Section 148 of the N.I.Act, necessary orders may be passed for a fresh consideration of the learned Sessions Court.

9. It would be appropriate to reproduced the observations of the Apex Court in the case of Jamboo Bhandari (Supra), in Para – 4 to 6 which is as under:

> **4.** The High Court relied upon the decision of this Court in Surinder Singh Deswal v. Virender Gandhi[3]. The High Court proceeded on the footing that, as this Court has interpreted the word "may" appearing in Section 148 as "shall", the relief of suspension of sentence under Section 389 CrPC can be granted only by directing the accused to deposit minimum of 20% of the compensation/fine amount.
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> **5.** Para 8 of the decision of this Court in Surinder Singh Deswal reads thus: (SCC p. 350)
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> > "**8**. Now so far as the submission on behalf of the appellants that even considering the

language used in Section 148 NI 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 NI Act as amended is concerned, considering the amended Section 148 NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 NI Act, though it is true that in the amended Section 148 NI 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 NI 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 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 NI 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 NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 NI Act, but also Section 138 NI Act.* The

> 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 dishonour 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, Parliament has thought it fit to amend Section 148 NI Act. Therefore, such 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."

> **6.** What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the 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."

10. Section 148 of the Negotiable Instruments Act was introduced with the object of strengthening the credibility of cheque transactions and to discourage dilatory tactics adopted by convicted accused during the pendency of appeals. The provision empowers the Appellate Court to direct the appellant to deposit a part of the fine or compensation awarded by the learned Trial Court while considering suspension of sentence and reads as under :

> **"148. Power of Appellate Court to order payment pending appeal against conviction.-**
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> **(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:
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> Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.
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> **(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.
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> **(3)** The Appellate Court may may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:
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> 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."

11. The legal position is no longer res integra. A perusal of the impugned order reveals that while directing deposit of only 10% of the cheque amount, the learned Sessions Judge has not recorded any exceptional circumstance nor assigned any reason as to why the statutory minimum contemplated under Section 148 of the N.I.Act should not be directed. The order is completely silent on this aspect. Such an exercise of discretion is inconsistent with the principles laid down by the Hon'ble Apex Court. This Court is of the opinion that the question whether any exceptional circumstance exists warranting departure from the statutory minimum is essentially one to be considered by the Appellate Court in the first instance. Since the Appellate Court has not examined the issue in the light of the law declared by the Apex Court , it would not be appropriate for this Court to substitute its own discretion. The ends of justice would, therefore, be met by remanding the matter to the learned Sessions Judge for fresh consideration.

12. Consequently, the impugned common order dated 08.05.2026 passed in Criminal Appeal No. 206 of 2026 below Exh. 5 and Exh.7 is set aside only to the limited extent of the condition directing deposit of 10% of the cheque amount. The order suspending the sentence and granting bail shall continue to remain operative, subject to such fresh order as may be passed by the learned 4th Additional Sessions Court under Section 148 of the N.I.Act.

13. The matter is remanded to the learned 4th Additional Sessions Judge, who shall reconsider the question of deposit under Section 148 of the N.I. Act afresh, independently and uninfluenced by the earlier order, after affording an opportunity of hearing to both sides. While deciding the issue, the Appellate Court shall keep in view the law laid down by the Hon'ble Apex Court and shall specifically examine whether any exceptional circumstances exist so as to justify any departure from the statutory requirement. In the event such departure is considered, detailed reasons shall be recorded in accordance with law.

14. Considering that the appeal is already pending, the learned Sessions Judge is directed to decide the aforesaid issue within a period of three months from the date of receipt of a copy of this order.

15. In view of the above, the present application stands disposed of. Direct service is permitted.

(S. V. PINTO,J)

F.S. KAZI