

APHC010368052024



**IN THE HIGH COURT OF ANDHRA
PRADESH AT AMARAVATI [3368]
(Special Original Jurisdiction)**

**WEDNESDAY, THE TWENTY EIGHTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL PETITION NO: 5914/2024

Between:

Chilakala Sreenivasulu **...PETITIONER/ACCUSED**

AND

The State Of Andhra **...RESPONDENT/COMPLAINANT(S)**
Pradesh and Others

Counsel for the Petitioner/accused:

1.Y NARAPA REDDY

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL PETITION No.5914 OF 2024**Between:**

Chilakala Sreenivasulu, S/o.Late Linganna, Aged 45 years, R/o.Sri Jyothi E-Techno School, Gosapadu Village and Mandal, Now residing at Flat No.H-6, Vora Towers, Madhura Nagar, Yousufguda, Hyderabad.

... Petitioner/Accused

Versus

1.The State of Andhra Pradesh, represented by its Public Prosecutor, High Court at Amaravati.

... Respondent/Respondent

2. Chakali Sreenivasulu, S/o.Late Pedda Veeraiah, Aged 47 years, Civil Engineer, R/o.LIG B-253, Dr.A.S.Rao Nagar, ECIL Cross Roads, Kaptra, R.R.District, Hyderabad.

...Respondent/Complainant

DATE OF ORDER PRONOUNCED : 28.08.2024.

SUBMITTED FOR APPROVAL:**HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

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| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copy of Order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the fair copy of the Order? | Yes/No |

JUSTICE B.V.L.N.CHAKRAVARTHI

*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CRIMINAL PETITION No.5914 OF 2024

% 28.08.2024

Between:

Chilakala Sreenivasulu, S/o.Late Linganna, Aged 45 years, R/o.Sri Jyothi E-Techno School, Gosapadu Village and Mandal, Now residing at Flat No.H-6, Vora Towers, Madhura Nagar, Yousufguda, Hyderabad.

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...Respondent/Complainant

! Counsel for the petitioner : Sri Yannam Narapa Reddy

**^ Counsel for the Respondent : Sri A.Sai Rohith, learned
No.1/State Assistant Public Prosecutor
for State.**

**^ Counsel for the Respondent :
No.2/Complainant**

< Gist:

> Head Note:

? Cases referred:

1. **Surinder Singh Deswal @ Colonel S.S.Deswal and others reported in 2019 (11) SCC 341.**
2. **Jamboo Bhandari Vs. M.P.State Industrial Development Corporation Limited and Others reported in 2023 LiveLaw (SC) 776.**

This Court made the following:

THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**CRIMINAL PETITION No.5914 OF 2024****ORDER:**

This Criminal Petition is filed by the petitioner/Accused, under Section 482 of Code of Criminal Procedure, 1973, for quash of the order dated 26.07.2024 in CrI.M.P.No.212 of 2024 in CrI.A.No.51 of 2024 passed by the learned III Additional District & Sessions Judge, Nandyal, Kurnool District.

2. Heard learned counsel for the petitioner and learned Assistant Public Prosecutor representing the State.

3. Learned counsel for the petitioner would submit that learned Sessions Judge in the appeal against the conviction for the offence punishable under Section 138 of Negotiable Instruments Act passed the impugned order dated 26.07.2024 in CrI.M.P.No.212 of 2024 under Section 389(3) Cr.P.C., directed the petitioner to deposit 20% of the compensation amount ordered by the learned Trial Judge within a period of one (01) month from the date of the order, while suspending the sentence of imprisonment awarded by the learned Magistrate. He would submit that the order of the learned Sessions Judge is not in accordance with **Jamboo Bhandari v. MP State Industrial Development Corporation Ltd's** case.

4. The learned Assistant Public Prosecutor takes notice for the State and would submit that the Appellate Court has power to order the appellant to deposit such sum, which shall be a minimum of 20% of the fine or compensation amount awarded by the trial Court in an appeal against the conviction U/s.138 of Negotiable Instruments Act.

5. Section 148 of Negotiable Instruments Act is as under:

S. 148

Power of Appellate Court to order payment pending appeal against conviction

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit¹ such sum which shall be a minimum of twenty percent 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.

6. The Hon'ble Supreme Court in the case of **Surinder Singh Deswal @ Colonel S.S.Deswal and others**¹, on section 148 of Negotiable Instruments Act held as under:

“Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the 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 has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, the word used is “may”, it

¹ 2019 (11) SCC 341

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 of the 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 file 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 of the 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 of the NI Act is purposively interpreted in Section 148 of the NI Act, but also Section 138 of the 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 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.”

7. The Hon’ble Supreme Court in **Jamboo Bhandari Vs. M.P.State Industrial Development Corporation Limited and Others²**, referring above para in the case of **Surinder Singh Deswal @ Colonel S.S.Deswal and others**, held in paras 6 to 9 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. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case

² **2023 LiveLaw (SC) 776**

which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.”

8. Therefore, in the light of above judgments of the Hon'ble Supreme Court, normally, the Appellate Court will be justified in imposing condition of deposit as provided in section 148 of N.I.A.ct. However, in a case, whether the Appellate Court is satisfied with the condition of deposit of 20% will be unjust,

exception can be made for the reason specifically recorded. Hence, when the Appellate Court considers an application filed U/s.389(3) Cr.P.C. corresponding to Section 430 of BNSS by the drawer of the cheque (accused), who was convicted for the offence U/s.138 of Negotiable Instruments Act, the Appellant Court has to consider whether it is exceptional case which warrants grant of suspension of sentence without imposing condition of deposit of 20% of fine/compensation amount. If the Appellate Court comes to said conclusion that it is an exceptional case, reasons for coming to such conclusion must be recorded.

9. In the case on hand, the impugned order of the learned Appellate Court does not disclose anything that the learned Appellate Court considered whether the cases in the exception or not? i.e., whether it warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount?

10. In those circumstances, the impugned order of the learned Appellate Court is set side and restored the application filed by the appellant U/s.389(3) Cr.P.C., corresponding to section 430 of BNSS before the Appellate Court. The petitioner/accused shall appear before the learned Appellate Court in 10 (ten) days from the date of receipt of copy of this order. On such appearance, the

learned Appellate Court shall consider the application afresh and dispose of the same as expeditiously as possible, preferably within seven (07) days. Till then, the sentence imposed by the learned trial Court stands suspended. If the petitioner/accused fails to appear before the learned Appellate Court as directed above, the Criminal Petition stands dismissed without recourse to the Court.

11. Accordingly, the Criminal Petition is disposed of at the stage of admission.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

28.08.2024.

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THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

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CRIMINAL PETITION NO: 5914 OF 2024

Note: Mark L.R. Copy.

B/o. psk

Date: 28.08.2024

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