

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3451 of 2024

Brajesh Kumar Agarwal, Erstwhile Director

M/s. D.S. Metals Pvt. Ltd.

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Pinak Kr. Mitra,
Mr. Kushagra Shah,
Ms. Ankita Dutta.

For the Opposite Party : None.

Judgment reserved on : 12.08.2026

Judgment delivered on : 03.09.2026

Shampa Dutt (Paul), J.:

1. The revisional application has been preferred challenging an order no. 2 dated July 8, 2024, passed by the learned Chief Judge, City Sessions Court, Calcutta, in Criminal Appeal No. 94/2024 whereby rejecting the prayer of the petitioner for waiver of the condition of the plea deposit as per Section 148 of the Negotiable Instrument Act, 1881 and directing that the appeal be admitted subject to the condition that the appellant

deposits 20% of the final amount before the learned trial Court as security deposit within 17.08.2024.

2. Vide the impugned order the learned Chief Judge, City Sessions Court, Calcutta while taking up the matter for hearing of the appeal relied upon **SCC OnLine Bom 560** wherein the Hon'ble Court held as follows:-

“Whether a deposit of a minimum sum of 20% of the fine or compensation is necessary under Section 148 of NI Act in an appeal filed by the persons other than “drawer” against the conviction and sentence under Section 138 of the NI Act. In an appeal under section 148 of NI Act filed by the persons other than “drawer” against the conviction under section 138 of the NI Act a deposit of a minimum sum of 20% of the fine or compensation is not necessary.

Heard the Ld. Advocates of both sides. Perused the record and the impugned judgment and order dated 08.04.2024 in connection with Complaint Case No.CS-384098 of 2024 from where it reveals that the appellant was convicted for the offence punishable u/s. 138 of Negotiable Instruments Act, 1881 and sentenced him to pay a fine of Rs.40,00,000/- in default of payment of fine amount to suffer simple imprisonment for a period of twelve months.

*Now I refer to and rely upon the judgement of the **Hon'ble Supreme Court of India** in the case of **Surinder Singh Deswal - Vs - Virender Gandhi** reported in **AIR 2019 SC 2956** wherein the Hon'ble Court has held that. considering the amended Section 148 of the N.I. Act as a whole to be read with the statement of objects and reasons of the Amendment Act, though it is true that in Section 148(1) of the N.I. 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. Section 148 of the N.I. 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 u/s. 389 CrPC to suspend the sentence. Moreover this Court finds that there are sufficient ground to proceed with the appeal.

*In view of the judgement of the **Hon'ble Apex Court** in the case of **Surinder Singh Deswal - Vs - Virender Gandhi**, the appeal is admitted subject to the condition that the appellant be directed to deposit **20% of the fine amount** before the Ld. Trial Court as security deposit within 17.08.2024.*

I am of the view that whether the appellant is the drawer of the cheque or not or whether the appellant was responsible for the day to day affairs of the company has already been decided by the Ld. Trial Court and an order of conviction has been passed against the appellant. I am of the view that the opening words of Section 148 of the Negotiable Instruments Act, are "Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), 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 20% of the fine or compensation awarded by the Trial court" Therefore, irrespective of the provisions of sections 357(2) of the Code of Criminal Procedure, pending appeal before the First Appellate Court, challenging the order of conviction and sentence u/s 138 of the Act, the Appellate Court is conferred with the power to direct the appellant to deposit

such sum irrespective of the fact as to whether he is the drawer or not pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the Trial Court. Thus the petition filed by the appellant u/s. 148 of the N.I. Act for waiver of the condition of pre-deposit as per section 148 of the Negotiable Instruments Act, 1881 is rejected.”

3. On perusal of the written complaint being Complaint Case No. CS-414036/2014, it appears that the petitioner herein along with another Director and the company have been made an accused in the present case. The petitioner herein is the accused no. 3 in the petition of complaint.
4. In paragraph 18 of the written complaint, the complainant has stated as follows:-

“18. The accused number 2 has not denied his signatures on the cheque in question at the stage of notice framed u/s 251, Cr.P.C. and examination u/s 1313, Cr.P.C. All the accused persons have pleaded that they are innocent during their examination under Section 313 Cr.P.C.”

Admittedly the petitioner herein is not the accuse no. 2.

5. It appears that **it is the accused no. 2 who is the signatory of the cheque and is thus the drawer of the cheque on behalf of the company. The petitioner herein being the accused no. 3 admittedly**, did not sign the cheque on behalf of the company though he was a Director and has now appeared as petitioner as erstwhile Director M/s. D.S. Metal Pvt. Ltd.

6. It further appears from the petition of complaint that the principal allegation is against the accused nos. 1 and 2, the company and the other Director,
7. There are no specific namely Suresh Kumar Agarwal.allegation against petitioner no. 3 herein.
8. It appears from the certified copy of the impugned order that the petitioner herein alone is the appellant before the learned Chief Judge, City Sessions Court, Calcutta. The other two accused persons are not before the Court.
9. Considering the said materials on record as noted above by this Court, this Court finds that the petitioner herein being not directly implicated in the written complaint is entitled to the relief as prayed for as per the discretion granted to the learned appellate Court under Section 148 of the N.I. Act considering that the provision notes that the appellate Court 'may'.
10. The petitioner herein has filed his written notes along with the following judgments relied upon:-
 - (i) ***(2007) 6 SCC 528, Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. & Anr.;***
 - (ii) ***2024 SCC ONLINE SC 1800, Shri Gurudatta Sugars Marketing P. Ltd. vs. Prithviraj Sayajirao Deshmukh & Ors.***
11. **Section 148 N.I. Act, lays down:-**

“Section 148: Power of Appellate Court to order payment pending appeal against conviction.

*(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 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 143-A.

(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.”

12. In view of the admitted fact that the petitioner herein (accused no. 3) is not the drawer of the cheque, the provision of Section 148 of the N.I. Act is not applicable to the petitioner and was erroneously allowed against the petitioner herein.

13. Accordingly, CRR 3451 of 2024 stands allowed.

14. The order no. 2 dated July 8, 2024, passed by the learned Chief Judge, City Sessions Court, Calcutta, in Criminal Appeal No. 94/2024, is quashed and set aside.
15. Trial Court to proceed in accordance with law.
16. All connected Application stand disposed of.
17. Interim order if any stands vacated.
18. There will be no order as to costs.
19. A copy of this judgment be sent to the learned Trial Court for necessary compliance.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)