$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.08.2025
Date of Decision: 09.09.2025

\+ CRL.REV.P.(NI) 149/2025, CRL.M.A. 20422/2025 & CRL.M.A. 20423/2025

IHOME AND INFRASTRUCTURE PVT LTD & ORS. .....Petitioners

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. H. S. Kohli, Mr. D.S. Kohli, Mr. Yash Kadyan and Ms. Mannat Kohli, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI AND ANR. .....Respondents

Through: Mr. Satish Kumar, APP for the State
Mr. Gautam Narayan, Senior Adv. with Mr. Kaustubh Prakash and Mr. Ravi Prakash Singh, Advs. for R-2.

\+ CRL.REV.P.(NI) 156/2025, CRL.M.A. 21106/2025 & CRL.M.A. 21107/2025

M/S IHOME AND INFRASTRUCTURE PRIVATE LIMITED & ORS. .....Petitioners

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. H. S. Kohli, Mr. D.S. Kohli, Mr. Yash Kadyan and Ms. Mannat Kohli, Advs.

versus

THE STATE NCT OF DELHI AND ANR .....Respondents

Through: Mr. Satish Kumar, APP for the State
Mr. Gautam Narayan, Senior Adv. with Mr. Kaustubh Prakash and Mr. Ravi Prakash

Singh, Advs. for R-2.

\+ CRL.REV.P.(NI) 157/2025, CRL.M.A. 21112/2025 & CRL.M.A. 21113/2025

AJAY KUMAR & ANR. .....Petitioners

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. H. S. Kohli, Mr. D.S. Kohli, Mr. Yash Kadyan and Ms. Mannat Kohli, Advs.

versus

THE STATE NCT OF DELHI AND ANR .....Respondents

Through: Mr. Satish Kumar, APP for the State

Mr. Gautam Narayan, Senior Adv. with Mr. Kaustubh Prakash and Mr. Ravi Prakash Singh, Advs. for R-2.

\+ CRL.REV.P.(NI) 158/2025, CRL.M.A. 21114/2025 & CRL.M.A. 21115/2025

AJAY KUMAR & ANR. .....Petitioners

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. H. S. Kohli, Mr. D.S. Kohli, Mr. Yash Kadyan and Ms. Mannat Kohli, Advs.

versus

THE STATE NCT OF DELHI AND ANR .....Respondents

Through: Mr. Satish Kumar, APP for the State

Mr. Gautam Narayan, Senior Adv. with Mr. Kaustubh Prakash and Mr. Ravi Prakash Singh, Advs. for R-2.

\+ CRL.REV.P.(NI) 159/2025, CRL.M.A. 21116/2025 & CRL.M.A. 21117/2025

M/S IHOME AND INFRASTRUCTURE PRIVATE LIMITED & ORS. .....Petitioners

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. H. S. Kohli, Mr. D.S. Kohli, Mr.

Yash Kadyan and Ms. Mannat Kohli, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI AND ANR. .....Respondents

Through: Mr. Satish Kumar, APP for the State
Mr. Gautam Narayan, Senior Adv. with Mr. Kaustubh Prakash and Mr. Ravi Prakash Singh, Advs. for R-2.

\+ CRL.REV.P.(NI) 160/2025, CRL.M.A. 21163/2025 & CRL.M.A. 21164/2025

AJAY KUMAR & ANR. .....Petitioners

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. H. S. Kohli, Mr. D.S. Kohli, Mr. Yash Kadyan and Ms. Mannat Kohli, Advs.

versus

THE STATE NCT OF DELHI AND ANR .....Respondents

Through: Mr. Satish Kumar, APP for the State
Mr. Gautam Narayan, Senior Adv. with Mr. Kaustubh Prakash and Mr. Ravi Prakash Singh, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

%

1. The present revision petitions have been instituted under Section 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, assailing impugned order dated 24.05.2025 passed by the learned ASJ, Saket Courts, in connection with cases bearing C.A. nos.75-80/2025, whereby a direction was issued to the petitioner to

deposit a sum equal to 20% of the fine amount awarded in favour of the respondent by the learned Metropolitan Magistrate *vide* judgments of conviction and sentencing dated 16.12.2024 and 28.01.2025, respectively. Subject to the making of such deposit within 60 days, the operation of the learned Trial Court's order of conviction was stayed, and the petitioner's sentence was suspended - as contemplated within Section 389 of the Code of Criminal procedure, 1973[1].

The Impugned Order

2. The respondent had invested in a real estate project and had subsequently entered into a buy-back agreement with the petitioner to the extent of 22 flats for a consideration of ₹3,78,76,866/- (of which a sum of ₹18,76,866/- was paid upfront). Per this agreement, 9 postdated cheques[2] of ₹40,00,000/- each were issued to the respondent by the petitioner, whereby it was agreed between parties that each cheque was to be returned to the petitioner along with the title deeds to two flats upon actual payment of said amount.

3. The petitioner's main contention was recorded as being that these cheques were issued as a security, and not for the discharge of any debt or liability, and they were not meant to be presented. *Per contra*, the respondent contended that these cheques signified a legally enforceable liability against the petitioner.

4. The petitioners contended before the learned ASJ that:

a. No legally enforceable debt/liability was made out before the learned Trial Court.

[1] "CrPC" hereinafter
[2] "PDCs" hereinafter

b. Their written arguments were not duly considered by the learned Trial Court.

c. The learned Trial Court's judgment ran contrary to settled principles of law concerning liability/debt under Section 138 of the Negotiable Instruments Act.

d. They may be exempted from making a deposit under Section 148 of the NI Act, in light of the Hon'ble Supreme Court's decision in ***Jamboo Bhandari v Madhya Pradesh State Industrial Development Corporation Ltd.***[3]

5. The learned ASJ, after recording the submissions of the petitioners and rebuttal thereagainst by the respondents, discussed the settled position of law as laid down by the Hon'ble Supreme Court; from ***Surender Singh Deswal @ Col. SS Deswal v Virender Gandhi***[4]**,** to ***Jamboo Bhandari*** *(supra)* and ***Muskan Enterprises v State of Punjab***[5]**.**

6. In this discussion, it was noted that both ***Surender Singh Deswal*** and ***Jamboo Bhandari*** were further discussed and interpreted in ***Muskan Enterprises***, and that ***Muskan Enterprises*** is currently the prevailing law on the subject- where it was held that normally, appellate courts should lean towards requiring a deposit to be made under Section 148 of the Act, and the rationale for the same is that an order under challenge does not bear the mark of invalidity on its forehead.

7. Thereafter, the learned ASJ noted that unless, upon a *plain reading* of the Trial Court's order on conviction and consequent sentence imposed, it becomes apparent that the same are wholly

[3] **(2023) 10 SCC 446**
[4] **(2019) 11 SCC 341**

incorrect and erroneous that it is only a matter of time for the same to be set aside – a deposit under Section 148 ought to be directed.

8. Finally, the learned ASJ went on to hold that, upon a *prima facie* reading, the orders of conviction and sentence passed by the learned Trial Court do not suffer from infirmities, and that rival submissions of parties were duly considered, subsequent to which relevant law had also been discussed.

9. This view was also clarified as being *prima facie*, and that examining the correctness of the learned Trial Court's order to an *ex-facie* degree would require a thoughtful examination of the entire record, including a detailed scrutinization of evidence led by both parties.

Rival Contentions

10. Arguments before this Court were advanced on behalf of the petitioner by Mr. Sudhir Nandrajog and Mr. Mohit Mathur, learned Senior Counsel, while the respondent was represented by Mr. Gautam Narayan, learned Senior Counsel. However, it is to be noted that Mr. Nandrajog appeared on behalf of the petitioner's only on a few occasions in Mr. Mathur's absence, and that final arguments were advanced by Mr. Mathur.

11. Learned Senior Counsel appearing on behalf of the petitioners began their submissions by drawing this Court's attention to the Buy Back Agreement between parties. First, they highlight the purpose for which the PDCs were handed over to the respondent, as laid down in Clauses 3 and 4 of the Buyback Agreement:

[5] **2024 INSC 1046**

> **"3.** That it has been mutually agreed that the Second Party shall further pay the balance sum of Rs. 3,60,00,000/- (Rupees three crores sixty lacs only) out of the Consideration Amount, to the First Party on or before 31.01.2019
>
> For ensuring the payment of the balance consideration amount, the Second Party has handed over nine Postdated cheques of Rs.40/00,000/ each to the First Party, detailed as under:
>
> *****
>
> It is agreed between the parties that in case of every part payment of an amount of Rs.40,00,000/- by the Second Party to the First Party before 31.01.2019, then in that event, the First Party shall immediately return a corresponding PDC of Rs.40,00,000/- to the Second Party.
>
> The parties have further mutually agreed that if as on 31.01.2019, certain PDCs still remain to be encashed, then the same shall not be presented by the First Party provided, the Second Party issues fresh PDCs for mutually agreed dates along with interest upto the said dates In lieu of the outstanding PDCs."
>
> "4**.** It is further clarified and agreed between the parties that in case of delay/default in payment of Consideration as above, the First Party apart from their legal rights and remedies shall be entitled to an Interest 14% on the outstanding amount of Consideration from the date of default till the actual date of the said payment"

12. Relying on these clauses of the agreement, he contends that the cheques were never intended to have been presented. Mr. Mathur submits that the agreement contemplates a scenario where payment fails to be made in lieu of the PDCs handed over to the respondent by providing for the issue of fresh PDCs along with an interest of 14%, and that this very contemplation is itself evidence that consensus *ad idem* - the PDCs never were issued with the intent of their encashment.

13. Building on this argument, he submits that allegations under Section 138 of the Act are attracted only where cheques are issued against an existing obligation/ liability, and that the facts at hand are such that the title to the flats in question remain with the respondent. It

is for this reason that they refute any obligation to pay arising out of these flats, given that the titles for the same have not yet been transferred to the petitioners and that failure to pay does not cause loss of any kind to the respondents.

14. As to judicial authorities relied on, Mr. Mathur begins with the Hon'ble Supreme Court's decision in ***Surender Singh Deswal***, stating that it was in this case that a deposit under Section 148 was interpreted to have a mandatory connotation. He then highlights a more recent decision in ***Jamboo Bhandari***, paragraph 6 of which, he argues, as qualifying and diluting the interpretation adopted in ***Surender Singh Deswal*** to the extent of such deposit being waivable in case it was observed as being unjust or curbing a party's right to appeal.

15. He then submits that in ***Jamboo Bhandari***, the revision petitions before the concerned High Court stood restored as the Hon'ble Supreme Court observed that it was erroneous to proceed on the premise that a deposit under Section 148 was the absolute rule and that it does not accommodate any exception.

16. Mr. Mathur then brings this Court's attention to paragraph 27 of the decision in ***Muskan Enterprises***. He submits that this decision contemplates a scenario that lies in addition to the exceptions carved out in ***Jamboo Bhandari*** with respect to the ordering of a deposit under Section 148, where the appellate court may waive such deposit if it is of the opinion that the order of conviction is so wholly incorrect and erroneous that it is only a matter of time that it would be set aside. He argues that though ***Muskan*** utilises the phrase "*on a plain reading of the order*"; irregularities as to the admissibility of evidence relied upon and the correctness of its appreciation, the linkage between the appellant and the offence, and the adherence of compensation awarded

to tests of proportionality, *inter* alia, require a detailed scrutiny of the Trial Court record.

17. It is on this note that he submits that the learned ASJ did not address the petitioner's objections to the correctness of the orders of the learned Trial Court, while the same ought to have been done.

18. On a query by this Court as to whether any grounds of financial hardship have been pleaded by the petitioners, Mr. Mathur answers in the affirmative, and attention is drawn to the petitioners' application praying for waiving off the deposit under Section 148. While paragraph 7 of this application makes mention of a real estate market that is presently non-lucrative, Mr. Mathur is unable to point out where such claim has been substantiated by adequate reasoning/ documentation, neither within the application itself, nor through oral submissions.

19. Mr. Mathur proceeds to the order of conviction of the learned Trial Court dated 16.12.2024, highlighting paras 18, 29, 32, 33, 35, 36 and 38 to state that the petitioner's submissions as to the absence of liability under Section 138 of the Act were not dealt with, and that the presumption under Section 139 could not have been triggered as the respondents fail to discharge their onus to this extent. He is especially aggrieved due to the learned Trial Court's focus on Clause 5 of the Buyback Agreement to the exclusion of its other clauses.

20. He also vehemently opposes the fact that the petitioner-company's directors have been roped in as co-accused as two of them are not signatories to the cheque or the Buyback agreement. To this extent, he places reliance on ***Shri Gurudatta Sugars Marketing Pvt***

Ltd v Prithviraj Sayajirao Deshmukh[6]to contend that a drawer of a cheque cannot be construed as an individual where the cheque was issued by a company.

21. With respect to the learned Trial Court's application of relevant judicial authorities, Mr. Mathur contends that the application of ***Sampelly Satyanarayana Rao v Indian Renewable Energy Development Agency Ltd.***[7]to the present facts was wholly erroneous as ***Sampelly*** was a situation where a loan had been advanced by the complainant and liability under Section 138 of the Act was clear and unambiguous. He states that the learned Trial Court ought to have instead relied upon ***M/s Indus Airways Pvt Ltd v M/s Magnum Aviation Pvt Ltd***[8], where the implications of advance payments on liability under Section 138 was discussed and distinguished from a civil liability that arises from breach of contract.

22. Lastly, Mr. Mathur submits that the conduct of the respondents in not pursuing civil proceedings and instead choosing to encash the cheques in contravention to the clauses of the Buyback agreement speaks volumes as to their intention of precipitating criminal proceedings from a purely civil dispute.

23. Mr. Gautam Narayan begins his rebuttal by challenging the very maintainability of a criminal revision petition against an order directing a deposit under Section 148, citing the Madras High Court's decision in ***Bapuji Murugesan v Mythli Rajagopalan***[9]**,** where such revision petition was dismissed as being not maintainable, with liberty to approach the court *de novo* by invoking Section 482 of the CrPC.

---

[6] **2024 SCC OnLine SC 1800**
[7] **(2016) 10 SCC 458**
[8] **(2014) 12 SCC 539**
[9] **2022 SCC OnLine Mad 3258**

24. He then lays down relevant judicial authorities on the subject of Section 148 of the Act, beginning with paragraphs 7.1, 8, and 12 of the judgment in ***Deswal*** to argue that the object of the provision is to ensure that the issuers of cheques do not entangle the recipient of such cheques in endless litigation without recourse.

25. He then proceeds to ***Jamboo Bhandari***, arguing that paragraphs 6 and 7 of the judgment lay down a purpose interpretation to Section 148 of the Act where it has been observed that, though a deposit under the section may be directed in the ordinary course of events – an exception to the same may be carved out in case such deposit is proven to be onerous or deprivative of a convict's right to appeal.

26. Arriving finally at ***Muskan Enterprises***, Mr. Narayan points out the discussion of ***Surender Singh Deswal*** and ***Jamboo Bhandari*** in paragraphs 21 and 22 of the judgment. He then places reliance on paragraphs 26 and 27, submitting that a caveat is created here. However, this is where he significantly deviates from Mr. Mathur's submissions – arguing that the exercise of the appellate court in forming an opinion as to whether "*the order of conviction and consequent sentence imposed is so wholly incorrect and erroneous that it is only a matter of time for the same to be set aside*" is entirely *prima facie* in nature, and does not, in any manner, stipulate a detailed scrutinization of the learned Trial Court's record.

27. Buttressing his interpretation of ***Muskan Enterprises***¸ Mr. Narayan places reliance on certain judgments of various High Court's that he argues have interpreted the law in the same vein. The first among these is the judgment of the Delhi High Court in ***Bandhu Baba***

Khad Bhandar v NCT Delhi[10] where ***Muskan*** was identified as the exception and not the rule – holding that at the stage of a decision on suspension of sentence, no detailed re-evaluation of the evidence in an order of conviction is called for. It was also laid down here that pleas of financial hardship as a reason for waving off a deposit under Section 148 ought to be supplemented by requisite proof.

28. These views, as Mr. Narayan demonstrates, have also been upheld in the decision of the High Court of Punjab and Haryana in ***Kesar Singh v M/s Mohit Commission Agent***[11] and the decision of the High Court of Himachal Pradesh in ***Chander Shekhar Jain v Manjeet Singh***[12], the latter of which also held that directions calling for a deposit under Section 148 of the Act do not amount to an act of "*prejudging*" an appeal by the appellate court.

29. In rebuttal, Mr. Mathur submits that a challenge to the maintainability of the present batch of criminal revision petitions are not barred owing the judgment in ***Bapuji Murugesan.*** He submits that these petitions have been filed along with the invocation of Section 528 of the BNSS, thereby adopting the recourse that the petitioner in ***Bapuji Murugesan*** failed to – effectively disarming any objections against their maintainability.

30. Heard learned counsel for the parties and perused the record.

Analysis

31. The proposition of law relevant to adjudicating the present batch of revision petitions pertains solely to the powers of an appellate court in its issuance of directions under Section 148 of the NI Act.

[10] **Judgment dated 29.05.2025 in Crl M.C. 3908/2025**
[11] **Judgment dated 14.01.2025 in CRR-55-2025 (O&M)**

However, it is proper to address preliminary objections regarding the maintainability of these petitions before proceeding to discuss their merits.

32. At the outset, Section 148 of the NI Act merits reproduction considering its position as the focal point of the present dispute:

> **"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 per cent. 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."

33. Broadly, the contentions before this Court shall be dealt with in the following order:

a. Maintainability of the present batch of review petitions considering the bar under Section 397(2) of the CrPC/ Section 438(2) of the BNSS.

---

[12] **Judgment dated 14.07.2025 in Cr MMO 575/2025**

b. The power of an appellate court to call for a deposit under Section 148 of the Act.

34. The issue as to the correctness of the directors of the petitioner-company being arraigned as co-accused, and convicted subsequently, is outside the scope of the challenge before this Court and may be raised during appellate proceedings that are currently ongoing before the learned ASJ.

On the Aspect of Maintainability

35. Certain High Courts have taken a view on this proposition, with the decision in ***Bapuji Murugesan*** being one such oft-cited example. ***Bapuji*** held that revision petitions against orders passed under Section 148 of the Act are not maintainable owing to their interlocutory nature, and that their correct route of challenge lies in the invocation of Section 482 of the CrPC.

36. However, this Court is of a different opinion. While the learned Madras High Court in ***Bapuji Murugesan*** conducted a commendable exercise of laying down the definition of interlocutory, intermediate, and final orders - and then sought to categorise an order under Section 148 of the Act under one of these heads, this Court chooses to traverse a different route to ascertain the maintainability of the present batch of revision petitions.

37. At the outset, it is imperative to consider the Hon'ble Supreme Court's observation contained in paragraph 6 of ***Jamboo Bhandari***. Here, a deposit under Section 148 of the Act has been considered to be waivable where it would "*amount to deprivation of the right of appeal*

of the appellant". This exception shines a light upon the very nature of an order passed under Section 148.

38. Considering that directions for a deposit may, in some cases, have the effect of depriving a party of their right to appeal - their classification in the category of "*interlocutory orders*" – as done in ***Bapuji Murugesan*** ought to be reconsidered.

39. In this light, the Hon'ble Supreme Court's observation in ***Girish Kumar Suneja v. CBI***[13]merits reproduction:

> "21. The concept of an intermediate order was further elucidated in ***Madhu Limaye* v. *State of Maharashtra***[14] by contradistinguishing a final order and an interlocutory order. *This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order.* Two such intermediate orders immediately come to mind—an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue."
>
> (emphasis supplied)

40. Therefore, applying the test to determine whether an order passed under Section 148 is barred by the application of Section 397(2) of the CrPC/ Section 438(2) of the BNSS, it is observable that when such an order calling for a deposit cannot be complied with by the appellant – the same may foreclose the appellant's right to appeal, implying the termination of proceedings. Of course, such order can

---

[13] **(2017) 14 SCC 809**
[14] **(1977) 4 SCC 551**

only be deemed to wrongly foreclose such right where the appellate court is satisfied that a deposit would be unjust. Such termination would definitely prejudice the rights of the appellant to institute an appeal. By this interpretation, an order under Section 148 cannot be interpreted as purely interlocutory in nature. Therefore, no bar seems to be attracted against its challenge *vis-a-vis* a revision petition before a High Court of competent jurisdiction.

41. Travelling a step further, reference is made to paragraph 12 of the decision in ***Jamboo Bhandari***. Here, the Hon'ble Supreme Court restored the revision petitions that were originally filed before the concerned High Court in challenge against an order for deposit under Section 148. Paragraph 12 stands reproduced for ready reference:

> "12. In these circumstances, *we set aside the impugned orders, of the High Court and restore the revision petitions filed by the appellants before the High Court*. We direct the parties to appear before the roster Bench of the High Court on 9-10-2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court, it will not be necessary for the High Court to issue a notice of the date fixed for hearing. The High Court, after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the revision petitions in the light of what we have observed in this judgment. Till the disposal of the restored revision petitions, the interim order passed by this Court ordering suspension of sentence will continue to operate."
>
> (emphasis supplied)

42. The extracted paragraph is a classic case of *res ipsa loquitor*. For the aforesaid reasons, the respondent's arguments against the maintainability of the present petitions fail to impress this Court and are rejected.

Power of an appellate court under Section 148 of the Act

43. The evolution of the law from ***Surender Singh Deswal*** to ***Muskan Enterprises*** stands undisputed, and these decisions have formed the road map to interpret Section 148 of the Act. ***Deswal*** laid down that the word "*may*" in Section 148 ought to be interpreted as "*shall*", and that the language of the provision evinces a mandatory nature of its content. However, a few years after the judgment in ***Deswal***, ***Jamboo Bhandari*** laid down that –

a. A deposit under Section 148 of the Act while suspending a convict's sentence is to be ordinarily directed; and

b. Such deposit might be waived if the Appellate Court is satisfied that it is -

i. Unjust; or

ii. Imposing such a condition that would amount to deprivation of the appellant's right to appeal.

44. The transition from ***Deswal*** to ***Jamboo Bhandari*** meant that a deposit under Section 148, though ordinarily called for, could be waived in certain circumstances. This exercise of carving out exceptions where a deposit under Section 148 may be waived was augmented by the decision in ***Muskan***, which laid down that such deposit may also be waived where an impugned order is so "*wholly incorrect or erroneous that is only a matter of time for the same to be set aside*". Paragraph 27 of the judgment in ***Muskan*** merits reproduction in this context:

> " 27. We may take the discussion a little forward to emphasize our point of view. *There could arise a case before the Appellate Court where such court is capable of forming an opinion, even in course of considering as to what would be the appropriate quantum of fine or compensation to be kept in deposit, that the*

impugned conviction and the consequent sentence recorded/imposed by the trial court is so wholly incorrect and erroneous that it is only a matter of time for the same to be set aside and that ordering a deposit would be unnecessarily burdensome for the appellant. Such firm opinion could be formed on a plain reading of the order, such as, the conviction might have been recorded and sentence imposed without adherence to the mandatory procedural requirements of the N.T. Act prior to/at the time lodging of the complaint by the complainant rendering the proceedings vitiated, or the trial court might have rejected admissible evidence from being led and/or relied on inadmissible evidence which was permitted to be led, or the trial court might have recorded an order of conviction which is its ipso dixit, without any assessment/analysis of the evidence and/or totally misappreciating the evidence on record, or the trial court might have passed an order failing to disclose application of mind and/or sufficient reasons thereby establishing the link between the appellant and the offence, alleged and found to be proved, or that the compensation awarded is so excessive and outrageous that it fails to meet the proportionality test : all that, which would evince an order to be in defiance of the applicable law and, thus, liable to be labelled as perverse. These instances, which are merely illustrative and not exhaustive, may not arise too frequently but its possibility cannot be completely ruled out. It would amount to a travesty of justice if exercise of discretion, which is permitted by the legislature and could indeed be called for in situations such as these pointed out above, or in any other appropriate situation, is not permitted to be exercised by the Appellate Court by a judicial interpretation of 'may' being read as 'shall' in sub-section (1) of Section 148 and the aggrieved appellant is compelled to make a deposit of minimum 20% of the fine or compensation awarded by the trial court, notwithstanding any opinion that the Appellate Court might have formed at the stage of ordering deposit as regards invalidity of the conviction and sentence under challenge on any valid ground. Reading 'may' as 'may' leads to the text matching the context and, therefore, it seems to be just and proper not to denude the Appellate Court of a limited discretion conferred by the legislature and that is, exercise of the power of not ordering deposit altogether albeit in a rare, fit and appropriate case which commends to the Appellate Court as exceptional. While there can be no gainsaying that normally the discretion of the Appellate Court should lean towards requiring a deposit to be made with the quantum of such depositdepending upon the factual situation in every individual case, more so because an order under challenge does not bear the mark of invalidity on its forehead, retention of the power of such court not to order any deposit in a given case (which in its view and for the recorded reasons is exceptional) and calling for exercise of the discretion to not order deposit, has to be

> conceded. If indeed the legislative intent were not to leave any discretion to the Appellate Court, there is little reason as to why the legislature did not also use 'shall' instead of 'may' in sub-section (1). Since the self-same section, read as a whole, reveals that 'may' has been used twice and 'shall' thrice, it must be presumed that the legislature was well and truly aware of the words used which form the skin of the language. Reading and understanding the words used by the legislature in the literal sense does not also result in manifest absurdity and hence tinkering with the same ought to be avoided at all costs. We would, therefore, read 'may' as 'may' and 'shall' as 'shall', wherever they are used in Section 148. This is because, the words mean what they say."

(emphasis supplied)

45. The degree of scrutiny for the purpose of the application of the third exception (as laid down in ***Muskan***) to the ordering of a deposit under Section 148 is unequivocally stated to be of a *prima facie* nature, evident from the Hon'ble Supreme Court's usage of the phrase "*on a plain reading of the order*". This view is buttressed by the view adopted by a coordinate bench of this Court in ***Bandhu Baba Khad Bhandar***, where the consideration of an argument as to the ledger account in question reflecting no outstanding dues was held to be an exercise involving a degree of scrutiny that exceeds the threshold laid down in ***Muskan***.

46. On that note, those of Mr. Mathur's submissions which were challenges to the learned Trial Court's orders of conviction and sentencing, rather than challenges to the impugned order of the learned ASJ whereby a deposit under Section 148 was directed, cannot be considered at this stage. Any observations on this front would amount to usurping the learned ASJ of its power to hear and decide the pending appeal.

47. This Court acknowledges the learned ASJ's exercise of carrying out a plain reading of the learned Trial Court's judgment in

accordance with the law laid down in ***Jamboo Bhandari*** and ***Muskan Enterprises***, which stands reproduced below for ready reference:

> "3.3 In view of the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, it is pellucid that it is only in a rare, fit and exceptional case, the appellate court may exercise discretion of not ordering a deposit altogether while suspending the sentence.
>
> 3.4 On a bare reading of the Ld. Trial Court's judgment, it is observed that the Ld. Trial Court had considered the rival contentions and after discussing the law on the subject had passed the impugned judgment. Examining correctness of the decision of the Ld. Trial Court would require thoughtful consideration and detailed examination of the Ld. Trial Court's Record including evidence brought on record by both the sides. On a prima facie reading, this does not appear to be a fit case for exercise of exceptional and extraordinary discretion to exempt the appellants from making a deposit in terms of Sec. 148 NI Act."

48. No infirmity is to be observed in this exercise, as a plain reading by the learned ASJ revealed the learned Trial Court's recording of rival contentions and discussion of applicable law thereto. As rightly observed thereafter, any scrutinization beyond this would require a detailed reappreciation of the learned Trial Court's record.

49. Coupled with this, it is to be noted that the petitioner's arguments of financial hardship do not impress the Court as they remain unsubstantiated. The decision in ***Bandhu Baba Khad Bhandar*** also emphasises that claims of financial hardship, when made to convince the Court that a deposit under Section 148 would deprive the appellant's right to appeal, ought to be supplemented by requisite proof.

50. In light of this discussion, this Court finds no merit in the present batch of revision petitions, which stand dismissed for the aforesaid reasons.

51. The petitioners are directed to comply with the directions contained within impugned order dated 24.05.2025 passed by the learned ASJ, Saket Courts, within a period of one week from today. During this period, their sentences shall remain suspended.

AJAY DIGPAUL, J.

SEPTEMBER 9 , 2025/ar/av