



2025:DHC:11664



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

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*Judgment reserved on: 04.11.2025**Judgment pronounced on: 19.12.2025**Judgment uploaded on: 20.12.2025*+ **CRL.REV.P.(NI) 35/2024, CRL.M.A. 30497/2024,  
CRL.M.A. 16514/2025 & CRL.M.A. 16563/2025**

M/S USHA JEWELLERS PVT LTD

.....Petitioner

Through: Ms. Sarita Sharma and Mr.  
Narendra Bhati, Advocates

versus

STATE BANK OF INDIA

.....Respondent

Through: Mr. Pardeep Bhasin and Mr.  
Shashwat Kumar, Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J****CRL.M.(BAIL) 1689/2024 & CRL.M.(BAIL) 1175/2025**

1. The petitioner herein stands convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [hereafter '*NI Act*'] by the learned Trial Court and was sentenced to undergo simple imprisonment for a period of one year along with payment of compensation amounting to ₹1,90,23,000/- (in default, simple imprisonment for three months). The appeal preferred by the petitioner before the learned Sessions Court was also



dismissed. Aggrieved by the concurrent findings of the Courts below, the petitioner has approached this Court by way of the present revision petition.

2. The scope of the present judgment is confined to the adjudication of the petitioner's two pending applications seeking suspension of sentence during the pendency of the captioned revision petition.

3. Brief facts of the case are that the respondent-complainant Bank had filed a complaint under Section 138 of the NI Act, alleging that the petitioner herein had approached the Bank with an Inland Irrevocable Letter of Credit dated 11.12.2007 for an amount of ₹95,11,500/-, purportedly drawn on Union Bank of India, Viman Nagar Branch, Pune. He had requested the Bank to discount the said Letter of Credit and to credit the proceeds to Account No. 10505582195 maintained with the respondent Bank in the name of M/s Usha Jewellers Pvt. Ltd. It was alleged that the applicant of the said Letter of Credit was M/s Sagar Jewellers, Pune. Acting upon the request of the petitioner, the respondent Bank had discounted the Letter of Credit and credited the proceeds to the appellant's account on 18.12.2007. Subsequently, Union Bank of India, Viman Nagar Branch, Pune, had informed the respondent Bank that it had neither issued the aforesaid Letter of Credit nor did it maintain any account in the name of M/s Sagar Jewellers. According to the respondent Bank, the Letter of Credit submitted by the petitioner was forged and fabricated. Consequently, the respondent Bank had issued a letter



dated 26.03.2008 calling upon the petitioner to deposit an amount of ₹95,11,500/- towards liquidation of the liability arising on account of the forged Letter of Credit. In response, the petitioner had sent a letter dated 05.05.2008 along with a cheque bearing No. 558797 dated 20.05.2008 for ₹95,11,500/- drawn in favour of the respondent Bank. Upon presentation, the said cheque was dishonoured with the remarks “funds insufficient”, as reflected in the return memo dated 21.08.2008. Thereafter, the respondent Bank had issued a statutory legal demand notice dated 18.09.2008 calling upon the petitioner to make payment of the cheque amount. Despite service of the legal notice, the petitioner failed to make payment within the stipulated period, resulting in the filing of the complaint under Sections 138 and 142 of the NI Act. It was further alleged that the matter was also taken up with the Economic Offences Wing, pursuant to which the original dishonoured cheque was seized.

4. The record reflects that the complaint was initially filed on 23.10.2008; however, *vide* order dated 10.11.2014, the complaint was returned to the respondent Bank for want of territorial jurisdiction. The complaint was thereafter re-filed, and *vide* order dated 18.04.2015, cognizance of the offence punishable under Section 138 of the NI Act was taken and the petitioner was summoned to face trial.

5. After conclusion of the trial, the petitioner was convicted by the learned Trial Court, i.e., learned MM (NI Act)-02, West District, Tis Hazari Courts, *vide* judgment dated 27.03.2023 and order on



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sentence dated 11.04.2023 in CC No. 1665/2016, and was sentenced to simple imprisonment for a period of one year and to pay compensation of ₹1,90,23,000/-, and in default of payment of compensation, to undergo simple imprisonment for a period of three months. The appeal preferred by the petitioner, being CA No. 158/2023, was dismissed by the learned Sessions Court, i.e., learned ASJ-05, West District, Tis Hazari Courts. Thereafter, the petitioner has preferred the present revision petition.

6. The learned counsel appearing for the petitioner submits that the petitioner has remained in custody since 01.10.2024, has already undergone the substantive sentence of one year, and is presently undergoing the default sentence, which is stated to conclude on 01.01.2026. It is contended that the petitioner is about 68 years of age, is a senior citizen suffering from age-related ailments, and is financially incapable of depositing 20% of the compensation amount as directed. On merits, it is argued that the petitioner was never arrayed as an accused in the complaint filed under Section 138 read with Section 141 of the NI Act and that cognizance was initially taken only against the company, namely M/s Usha Jewellers Pvt. Ltd. It is submitted that no notice under Section 251 of Cr.P.C. was ever framed against the company and that the foundational requirements for invoking vicarious liability under Section 141 of the NI Act were not satisfied. It is further contended that the cheque in question was drawn on the account of the company, which alone was the “drawer”, and that the petitioner had merely signed the cheque in his representative capacity as an authorised signatory. It is also urged



that no statutory notice was served upon the petitioner in his personal capacity and, therefore, the conviction recorded against him is unsustainable in law. It is submitted that these legal infirmities could not be effectively urged before the courts below due to inadvertence on the part of the earlier counsel, and that the petitioner, being a layperson, ought not to suffer on account thereof. On these grounds, suspension of sentence is prayed for.

7. *Per contra*, the learned counsel for the respondent-Bank submits that the present revision petition is not confined to the issues arising from the impugned judgment and seeks to introduce facts pertaining to other criminal proceedings involving the petitioner. It is contended that in his reply to the notice under Section 251 of Cr.P.C., the petitioner had admitted that he had got the Letter of Credit discounted from the respondent Bank and had also acknowledged that the cheque in question bears his signatures and that the statutory legal notice was sent to his correct address. It is argued that the cheque was issued by the petitioner along with a covering letter dated 05.05.2008, undertaking to repay the amount credited to the company's account, thereby clearly establishing that the cheque was issued towards discharge of a legally enforceable liability. Reliance is placed on the statutory presumptions under Sections 118 and 139 of the NI Act to contend that the same operate against the petitioner and that he failed to rebut these presumptions despite having full opportunity during the trial. It is further argued that the petitioner's plea of having supplied gold or silver articles to M/s Sagar Jewellers remains wholly unsubstantiated, as no supporting documents such as



bills, invoices, transport records, insurance details, or tax documents were produced. It is also emphasised that Union Bank of India categorically denied issuance of the Letter of Credit or maintaining any account in the name of M/s Sagar Jewellers, thereby establishing that the Letter of Credit submitted by the petitioner was forged. Lastly, it is submitted that despite contesting both the trial and the appeal, the petitioner has consistently failed to comply with the directions of the learned Sessions Court regarding deposit of the amount or payment of costs, leading to issuance of non-bailable warrants and proceedings under Section 82 of Cr.P.C. On these grounds, dismissal of the present applications is sought.

8. This Court has **heard** arguments addressed by the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent, and has perused the material available on record.

9. The conduct of the petitioner subsequent to the filing of his appeal before the learned Sessions Court merits careful consideration. Upon preferring an appeal against his conviction, the learned Sessions Court, *vide* order dated 10.05.2023, suspended the sentence of the petitioner subject to strict conditions, including deposit of 25% of the compensation amount in two instalments and furnishing of requisite bail bonds. The petitioner was directed to deposit 15% of the compensation within 15 days and the remaining 10% within one month thereafter. The record reveals that despite repeated opportunities granted on 10.07.2023 and 15.07.2023, the petitioner



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failed to comply with the said directions. Notably, not even a partial amount was deposited. Consequently, on 24.07.2023, in view of continued non-compliance, the learned Sessions Court vacated the order of suspension of sentence and directed that intimation be sent to the learned Trial Court to proceed in accordance with law. Thereafter, on 06.09.2023, 30.10.2023, and 10.11.2023, the petitioner again failed to deposit the amount or pay the costs imposed upon him. On 10.11.2023, the learned Sessions Court imposed further costs of ₹50,000/- and granted the petitioner a last opportunity. Despite this indulgence, the petitioner remained non-compliant and was absent on subsequent dates, including 31.01.2024 and 19.02.2024. This persistent default resulted not only in issuance of NBWs against the petitioner but also in initiation of proceedings under Section 82 of the Cr.P.C. by the learned Trial Court. It further emerges from the record that on 19.02.2024, a submission was made before the learned Sessions Court that the petitioner was willing to pay a sum of ₹50 lakhs to demonstrate his *bona fides* and willingness to discharge the liability. However, on the very next date, it was submitted on behalf of the petitioner that he was not in contact with his counsel and that his whereabouts were not known. Additional costs were thereafter imposed. On 13.05.2024, an application was filed on behalf of the petitioner stating that he intended to settle the matter with the respondent Bank and had agreed to make payment as per the schedule proposed therein. This assurance also remained unfulfilled. Eventually, the appeal was heard on merits and dismissed by the learned Sessions Court *vide* judgment dated 31.07.2024.



10. Pursuant thereto, the learned Trial Court issued warrants of arrest for execution of the sentence on 02.08.2024. The petitioner was arrested in execution of NBWs on 01.10.2024 and was initially remanded to judicial custody for two days by the Link Court. *Vide* order dated 03.10.2024, the petitioner was committed to judicial custody to undergo the sentence awarded to him. It is also relevant to note that on 01.10.2024, the learned Sessions Court dismissed the bail application filed by the petitioner seeking release on bail during the pendency of the revision petition before this Court.

11. The conduct of the petitioner before this Court is equally noteworthy. The captioned revision petition was listed for the first time on 09.10.2024, when the learned counsel for the petitioner, after making preliminary submissions, sought time to examine the matter further before advancing arguments. Thereafter, *vide* order dated 30.01.2025, this Court recorded that the learned counsel for the petitioner was unaware as to whether any amount had been paid by the petitioner in compliance with the orders of the courts below, and consequently, arguments on the application seeking suspension of sentence, i.e., CRL.M.(BAIL) 1689/2024, could not be addressed. On 17.02.2025, the learned counsel for the petitioner categorically stated before this Court that the petitioner would not be able to make any payment to the respondent Bank and, therefore, at that stage, did not press the application seeking suspension of sentence. Subsequently, the petitioner sought suspension of sentence on medical grounds. However, as recorded in the order dated 11.03.2025, upon consideration of the medical status report and noting that the





petitioner was receiving prescribed treatment at the jail hospital, this Court was not inclined to suspend the sentence on medical grounds, whereafter an adjournment was sought on behalf of the petitioner. Thereafter, the petitioner filed yet another application seeking suspension of sentence, being CRL.M.(BAIL) 1175/2025, which is presently under consideration.

12. The statutory mandate of Section 148 of the NI Act provides that notwithstanding anything contained in the Cr.P.C., in an appeal by the drawer against conviction under Section 138 of the NI Act, 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 such amount is required to be deposited within sixty days from the date of the order, extendable by a further period of thirty days for sufficient cause.

13. In ***Surinder Singh Deswal @ Col. S. S. Deswal v. Virender Gandhi***: (2019) 11 SCC 341, the Hon'ble Supreme Court examined the scope and object of Section 148 of the NI Act and held that the provision is mandatory in nature, having been introduced with the legislative intent of curbing dilatory tactics adopted by convicted persons in cheque dishonour cases and to ensure that the complainant is not left remediless during prolonged appellate proceedings.

14. Subsequently, in ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Ltd. & Ors.***: (2023) 10 SCC 446, the Hon'ble Supreme Court clarified that although ordinarily the Appellate Court would be justified in imposing the condition of



deposit as contemplated under Section 148 of the NI Act, it remains open to the Appellate Court, in exceptional circumstances, to suspend the sentence without insisting upon such deposit. However, it was categorically held that where such exemption is granted, the Appellate Court must record reasons demonstrating the existence of exceptional circumstances.

15. Recently, in *M/s R.A. Santana Marketing Services Pvt. Ltd. v. JMK Technology Pvt. Ltd. & Anr.*: Criminal Appeal No. 3635/2025, the Hon'ble Supreme Court set aside an order of the High Court whereby the accused had been exempted from depositing 20% of the compensation amount during pendency of his appeal on the ground of financial incapacity. The Supreme Court held that while personal liberty is of paramount importance, once suspension of sentence is granted subject to conditions, the convict is bound to comply with the conditions imposed, and failure to do so renders the interim protection liable to be withdrawn. It was further emphasised that financial inability, by itself, cannot be a ground to nullify the statutory requirement under Section 148 of the NI Act.

16. Even prior to the introduction of Section 148 of the NI Act, the principle that suspension of sentence in cheque dishonour cases can be made conditional upon deposit of the fine or a part thereof had been recognised by the Hon'ble Supreme Court. In *Stanny Felix Pinto v. Jangid Builders (P) Ltd.*: (2001) 2 SCC 416, the Hon'ble Supreme Court upheld the power of the appellate court to direct deposit of a portion of the fine while suspending the sentence,



observing that such a condition is neither unjust nor unconscionable, particularly where the fine imposed is substantial. It was observed as under:

“When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine he moved the superior court for suspension of the sentence. The High Court while entertaining his revision granted suspension of the sentence by imposing a condition that part of the fine shall be remitted in court within a specified time. It is against the said direction that this petition has been filed. In our view the High Court has done it correctly and in the interest of justice. We feel that while suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In this case the grievance of the appellant is that he is required by the High Court to remit a huge amount of rupees four lakhs as a condition to suspend the sentence. When considering the total amount of fine imposed by the trial court (twenty lakhs of rupees) there is nothing unjust or unconscionable in imposing such a condition. Hence, there is no need to interfere with the impugned order. As such no notice need be issued to the respondent.”

17. It is, however, undisputed that the petitioner has not deposited a single penny either before the learned Sessions Court or before this Court. Not only has the petitioner failed to comply with the statutory requirement under Section 148 of the NI Act, he has not even expressed any willingness to deposit a lesser percentage of the compensation amount as a measure of bona fides. His consistent stand before this Court is that he has no financial capacity whatsoever to deposit any amount for the purpose of securing suspension of sentence.



18. This plea of absolute financial incapacity stands in stark contrast to the petitioner's own conduct before the learned Sessions Court. As already noticed, on one occasion the petitioner had expressed willingness to deposit a sum of ₹50 lakhs to demonstrate his bona fides, while on another occasion he sought time on the premise that he intended to amicably settle the matter and make payment to the respondent Bank. These inconsistent stands materially dilute the credibility of the petitioner's present assertion that he is wholly incapable of making any payment, particularly when no such plea of complete indigence was raised at the appellate stage before the Sessions Court.

19. *Dehors* the conduct of the petitioner, this Court also finds that no extraordinary or exceptional circumstances have been demonstrated making out a case for suspension of sentence without insisting upon the petitioner's compliance with the statutory condition under Section 148 of the NI Act. Further, no glaring illegality or patent perversity has been pointed out in the concurrent findings returned by the learned Trial Court as well as the learned Sessions Court, on the basis of which this Court could *prima facie* form an opinion that the conviction is likely to be set aside in revision, which was held by the Hon'ble Supreme Court, in ***Muskan Enterprises & Anr. v. The State of Punjab & Anr.*** 2024 INSC 1046, as one of the main considerations for waiving of the deposit.

20. In view thereof, considering the overall facts and circumstances of the case, and especially the conduct of the petitioner



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before the Sessions Court of not depositing the 25% fine amount and thereafter remaining absconding for more than one year leading to issuance of NBWs and proceedings under Section 82 of Cr.P.C. and his inconsistent stands regarding his ability to make payment, and also the fact that he has now already served almost the entire sentence, this Court finds no merit in the present applications.

21. Accordingly, the applications seeking suspension of sentence i.e. CRL.M.(BAIL) 1689/2024 and CRL.M.(BAIL) 1175/2025 are dismissed.

22. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on the merits of the case.

23. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**  
**DECEMBER 15, 2025/zp**