

**Court No. - 11**

**Case :-** APPLICATION U/S 482 No. - 5955 of 2024

**Applicant :-** Mohammad Javad Farooqui

**Opposite Party :-** State Of U.P. Sect. Annexie Lko Thru. Its Prin. Secy. Lko  
And 2 Others

**Counsel for Applicant :-** Ashok Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Along with:**

**Case :-** APPLICATION U/S 482 No. - 5927 of 2024

**Applicant :-** Mohammad Yahya Farooqui @ Firoz Farooqui

**Opposite Party :-** State Of U.P. Sectt. Annexie Lko. Thru. Its Prin.Secy.And 2  
Others

**Counsel for Applicant :-** Ashok Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Abdul Moin,J.**

1. Heard learned counsel for the applicant, Sri Anurag Verma, learned Additional Government Advocate appearing for respondent no.1 and Sri Vimal Kumar, learned counsel, who files Vakalatnama on behalf of respondents no.2 and 3 in both the petitions, which are taken on record.

2. Learned counsels for the contesting parties state that facts of Application U/s 482 Cr.P.C. (now Section 528 of Bharatiya Nyaya Sanhita) No.5955 of 2024 and Application U/s 482 Cr.P.C. (now Section 528 of Bharatiya Nyaya Sanhita) No.5927 of 2024 are one and the same and that both the matters can be heard and decided together.

3. Accordingly, the Court proceeds to hear and decide both the matters together. For convenience, the facts of Application U/s 482 Cr.P.C. No.5955 of 2024 are being taken into consideration.

4. Under challenge is the order dated 19.04.2024 passed in Criminal Appeal No.111 of 2024 in re: Mohd. Javed Farooqui vs. State of U.P. and others, a copy

of which is Annexure-1 to the application, whereby upon an appeal filed by the applicant/petitioner, the learned court has required the appellant/applicant herein, to deposit 20% of the total fine imposed by the learned trial court within 30 days as a precondition for staying of the sentence and realization of fine.

5. The argument of learned counsel for the applicant is that the learned appellate court has patently erred in law in passing the order impugned dated 19.04.2024 to the extent it directs for deposit of 20% of the total fine.

6. The contention is that when from the merits of the case itself it emerges that no cheque had been issued by the applicant consequently there could not have been any occasion of conviction of the applicant and for that matter in the appeal filed by the applicant, there could not be any occasion for the appellate court to have directed for deposit of 20% of the total fine imposed by the trial court.

7. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & others** passed in Criminal Appeal No.2741 of 2023 decided on 04.09.2023.

8. Placing reliance on the aforesaid judgment of the Hon'ble Supreme Court in the case of **Jamboo Bhandari (supra)** the argument of learned counsel for the applicant is that for the appellate court to direct the appellant to deposit a certain amount the exceptions should be spelt out per which the amount is required to be deposited. However, the order impugned dated 19.04.2024 passed by the appellate court does not spell out the exceptions which have prevailed on the appellate court per which it has directed the applicant to deposit 20% of the amount of fine and as such the order impugned merits to be set-aside on this ground alone apart from the order impugned reflecting patent non-application of mind to the relevant facts of the case.

9. On the other hand, Sri Anurag Verma, learned AGA as well as Sri Vimal Kumar, learned counsel appearing for the private respondents, have supported the order impugned dated 19.04.2024 by contending that it is only in the

exceptional circumstances that the amount as required to be deposited under the provisions of Section 148 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the Act, 1881) is not to be deposited keeping in view the law laid down by the Apex Court in the case of **Jamboo Bhandari (supra)** which aspect of the matter has been considered threadbare by the learned appellate court while passing the order impugned and as such there is no illegality or infirmity in the said order.

10. In support of his argument, Sri Anurag Verma, learned AGA has placed reliance on a recent judgment of Hon'ble Supreme Court in the case of **Rakesh Ranjan Shrivastava vs. State of Jharkhand and another - (2024) 4 SCC 419** wherein Hon'ble Supreme Court after considering its earlier judgment in the case of **Jamboo Bhandari (supra)** has again considered the provisions of Section 148 of the Act, 1881 and has held likewise.

11. Heard learned counsels for the contesting parties and perused the records.

12. From the arguments as raised by the learned counsels for the contesting parties and perusal of records it emerges that in a complaint no.7078 of 2019 filed under Section 138 of the Act, 1881 in re: Asif Ali Ahmed Siddiqui and another vs. Mohd. Jawed Farooqui, the learned court vide judgment and order dated 14.03.2024, a copy of which is Annexure-13 to the application, has convicted the applicant herein under Section 138 of the Act, 1881. Thereafter, by means of order dated 20.03.2024, which is part of Annexure-13 to the application, the applicant has been directed to undergo imprisonment for a period of one year and a fine of Rs.15,00,000/- has also been imposed out of which Rs.11,00,000/- has been directed to be paid to the complainant as compensation. In default of payment of fine, the applicant was directed to undergo 3 months' simple imprisonment.

13. Being aggrieved, the applicant filed an appeal. The learned appellate court vide the order impugned dated 19.04.2024, a copy of which is Annexure-1 to the application, after considering the entire facts and circumstances of the case has stayed the operation of the impugned judgment so far as it relates to the sentence

and realization of fine subject to the condition that the appellant/applicant herein deposits 20% of the total fine imposed by the learned trial court within 30 days.

14. Being aggrieved by the said order to the extent that it has directed the applicant to deposit 20% of the total fine, the instant petition has been filed.

15. The argument of learned counsel for the applicant is that the provisions of Section 148 of the Act, 1881, so far as they pertain to the appellant/applicant being required to deposit a certain sum, starts off with the word 'may'. It is contended that it is the discretion of the learned appellate court to have directed for deposit of fine but the learned appellate court without considering the entire facts and circumstances of the case has directed for deposit of 20% of the total fine imposed by the learned trial court which would run contra to the judgment of the Hon'ble Supreme Court in the case of **Jamboo Bhandari (supra)** and as such the order impugned merits to be set-aside on this ground alone.

16. The further argument, as advanced by the learned counsel for the applicant, is that there is no liability of the applicant to pay the aforesaid amount which aspect of the matter has not been considered by the learned appellate court while passing the order impugned.

17. In this regard, the Court may consider the provisions of Section 148 of the Act, 1881, which, on reproduction, read as under:-

**"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 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 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."*

18. From perusal of Section 148 of the Act, 1881, it emerges that in an appeal filed 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.

19. Admittedly, the applicant has been convicted by the learned trial court vide judgment and order dated 14.03.2024 and 20.03.2024. In the appeal filed by the applicant, learned appellate court has required a deposit of 20% of the total fine. Sub-section (1) of Section 143 of the Act, 1881 gives the discretion to the Court to deposit such sum which shall be minimum of 20% of the fine or compensation which aspect of the matter has been considered by Hon'ble Supreme Court in the case of **Jamboo Bhandari (supra)** wherein the Hon'ble Court has held that non-deposit of the said amount would only be there in exceptional cases which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount meaning thereby that in case the appellate court is of the view that 20% amount is not to be deposited the same would fall within the exceptional circumstances and not invariably as is the argument advanced by the learned counsel for the applicant.

20. For the sake of convenience, the relevant observation of Hon'ble Supreme Court in the case **Jamboo Bhandari (supra)** is reproduced as under:-

*"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 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."*

21. As already indicated above, a perusal of the judgment of Hon'ble Supreme Court in the case **Jamboo Bhandari (supra)** clearly indicates that the Hon'ble Supreme Court has held that non-deposit of the amount under Section 148 by the learned appellate court would be an exception which has also been clearly spelt out by the appellate while requiring non-deposit of the said amount of 20%. In the present case, from perusal of the order impugned as passed by the appellate court dated 19.04.2024 it clearly emerges that no exceptions have been spelt out by the appellate court whereby it did not require deposit of 20% of the fine and as such once no exceptional circumstances have been spelt out by the learned appellate court in the order impugned clearly no error has been committed by the appellate court while requiring the deposit of the 20% amount.

22. Again this aspect of the matter has been considered by Hon'ble Supreme Court in a recent judgment of **Rakesh Ranjan Shrivastava (supra)** wherein after considering the earlier judgment **Jamboo Bhandari (supra)** the Hon'ble Supreme Court has held as under:-

*"Even sub-section (1) of Section 148 uses the word "may". In the case of Surinder Singh Deswal v. Virender Gandhi, this Court, after considering the provisions of Section 148, held that the word "may" used therein will have to be generally construed as "rule" or "shall". **It was further observed that when the Appellate Court decides not to direct the deposit by the accused, it must record the reasons.** After considering the said decision in the case of Surinder Singh Deswal<sup>1</sup>, this Court, in the case of Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited & Ors., in paragraph 6, held thus:*

*"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.**"*

(emphasis by the Court)

23. In the case of **Rakesh Ranjan Shrivastava (supra)** the Hon'ble Supreme Court has also considered the use of the word 'may' as used in sub-section (1) of Section 148 of the Act, 1881 to hold that the use of the word 'may' will have to

be considered as 'shall' and also reiterated that when the appellate court decides not to direct the deposit by the accused it must record the reasons i.e. the exceptional reason for non-deposit will have to be recorded.

24. As already indicated above, no exceptional circumstances have been indicated by the learned appellate court as to why it was of the view that 20% of the total fine should not be deposited meaning thereby that there were no exceptional circumstances which were found by the appellate court in not directing for deposit of the 20% of the total fine.

25. As regards the argument of the learned counsel for the applicant that there is no liability of the applicant to pay the amount, this argument will always be considered by the appellate court while deciding the appeal.

26. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the application under Section 482 Cr.P.C. is **dismissed**.

**Order Date :- 5.7.2024**

A. Katiyar