GAHC010128332025

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./682/2025

DR REEMA BODO
WIFE OF HIRA GOGOI,
PRESENT RESIDENTIAL ADDRESS
R/O THE TERRACE APARTMENT, 4-A, JAYANAGAR CHARIALI, BELTOLA, BASISTHA, DIST. KAMRUP, ASSAM
OFFICIAL ADDRESS-
SR. MEDICAL AND HEALTH OFFICER,
O/O THE JOINT DIRECTOR, HEALTH (MALARIA) KAMRUP (M), ASSAM
SAIKIA COMMERCIAL COMPLEX, SREENAGAR PATH,
G.S. ROAD, GUWAHATI-05, P.S. DISPUR, DIST. KAMRUP (M), ASSAM
RESIDENTIAL ADDRESS- MEGHMALLAR HOUSE, FLAT NO. 101, N.N. BARUAH LANE, RUKMINIGAON, P.S. DISPUR, DIST. KAMRUP (M), ASSAM

VERSUS

KRISNA BAYAN DAS
WIFE OF PUPAJIT KR DAS, RESIDENT OF VILLAGE SIMANTAPUR, WARD NO. 13, P.S. BARPETA,
DIST. BARPETA, ASSAM

Advocate for the Petitioner : MD. M H CHOUDHURY, R. BARUAH,TANZIM L. CHOUDHURY,MR. S N AHMED,MR. P CHAKRABORTY,MR MONZUR K CHOUDHURY,MS. D J BORAH

Advocate for the Respondent : MR. S K PODDAR, MS. N PODDAR

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

JUDGMENT

Date on which judgment is reserved : 04.04.2026

Date of pronouncement of judgment : 27.04.2026

Whether the pronouncement is of

the operative part of the judgment? : NA

Whether the full judgment has been Pronounced? : Yes

JUDGMENT & ORDER (CAV)

1. Heard Mr. M.K. Choudhury, the learned counsel for the petitioner. Also heard Mr. S.K. Poddar, learned counsel for the sole respondent/ complainant.

2. The instant criminal petition has been filed by the petitioner, namely Dr. Reema Bodo, invoking the provisions of Section 528 B.N.S.S., aggrieved by the order dated 20.05.2025, passed by the learned Additional Sessions Judge, Barpeta, in Criminal Appeal No. 33 of 2025, which was filed against the said impugned judgment and order passed by the learned Trial Court in a proceeding under Section 138 of the N.I. Act (Negotiable Instruments Act, 1881).

3. By the said order, apart from admitting the appeal, the trial Court sentence was stayed, subject to the payment of 20% of the fine amount by the petitioner within a period of 60 days, in terms of Section 148 of the Act.

4. Before proceeding further, the brief facts may be noted. The sole respondent as complainant filed a complaint under Section 138 of the N.I. Act before the court of the learned C.J.M. Barpeta, alleging dishonor of cheque issued by the petitioner. The case was registered as N.I. Case No. 71 of 2018, which proceeded to the stage of trial during which the petitioner, the complainant examined himself as P.W-1 and the petitioner and his wife

examined themselves as D.W-1 and D.W-2 respectively.

5. The respondent/complainant is stated to have developed friendship with the petitioner and her husband, and in course of the same, they sought a loan of Rs. 15 lakhs from the complainant, which he gave to the petitioner in view of their friendly relation. Subsequently, towards repayment of the same, on 26.08.2018, the petitioner issued a cheque of Rs. 10 lakhs via cheque No. 314680 drawn at her State Bank of India account at G.S. Road, Bhangagarh branch.

6. However, upon presentation of the cheque, it was dishonoured due to insufficient funds on 28.08.2018. It was the further case of the complainant before the Learned Trial Court that subsequently on 12.09.2018, he sent a legal notice to the accused demanding repayment within 15 days and that the notice was sent by registered post and received by the accused on 17.09.2018. It was stated by the complainant that as the accused failed to pay the amount, he initiated the proceeding before the Learned Trial Court under Section 138 of the NI Act.

7. After completion of trial, the Court of the learned Additional C.J.M. Barpeta, vide judgment and order dated 22.04.2025, convicted the petitioner under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for 6 months and to pay a compensation of Rs. 15 lakhs (in default to undergo S.I for 3 months).

8. Aggrieved by the said judgment of the learned Trial Court, the petitioner as appellant preferred an appeal before the learned Sessions C.J.M. Barpeta, which was registered as Criminal Appeal No.33 of 2025 and posted before the learned Additional C.J.M. Barpeta for disposal.

9. Vide order dated 20.05.2025, the appeal was admitted for hearing. However, on the prayer of the respondent/complainant, the impugned order of sentence was stayed, subject to the petitioner/ appellant depositing an amount of Rs.20% of the compensation awarded by the learned Trial Court, in terms of Section 148 of the N.I. Act and the said amount was directed to be deposited within a period of 60 days from the date of the order.

10. In support of his prayer for interference with the said order directing deposit of 50% of the fine amount, Mr. Choudhury, the learned counsel for the petitioner, submits that no statutory notice as required by law was sent to the other side and that any such notice was not sent to the proper address of the petitioner. The learned Counsel submits that the cheques were stolen by the brother of the complainant and misused giving rise to the instant cheque bouncing proceeding. It is submitted that the case of petitioner falls within the exceptional circumstances, which permit waiving of this deposit of 20% of the amount, at the time of admission of the appeal.

11. In support of his contentions, the learned counsel for the petitioner relies upon the following decisions:-

Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd & Ors, 2023 LiveLaw (SC): 2023 IN SC 822.

12. On the other hand, Mr. S.K. Poddar, the learned counsel for the complainant/respondent submits that the notice was issued upon the proper address and there is no infirmity regarding the same. It is further submitted that the accused had admitted the issuance of the cheque and therefore, the statutory presumptions were activated against her and she has been unable to rebut the said presumptions. It is submitted that no exceptional circumstances

are made out for waiving the condition of 20% deposit in terms of section 148 of the Act and therefore, there is no infirmity in the impugned order passed in this regard by the learned Appellate Court.

13. In support of his contentions, the learned counsel for the respondent/complainant cites the following decisions:-

(i) **Amit Kumar Saikia Vs. Anjol Gogoi** in **Crl. Pet. 1023/2023**,

(ii) **Sanjabij Tari Vs. Kishore S. Borcar & Anr. 2025 Supreme (Online) (SC) 9843**.

14. I have perused the impugned order, the relevant materials available at this stage and considered the rival submissions. I have also perused the decisions cited at the Bar.

15. Before we go further, the statutory provision and case law position may be looked at. The provision for directing payment of 20% of the fine or compensation amount is incorporated in Section 148 of the NI Act, which was inserted by the amendment in 2018. The said statutory provision may be reproduced herein below:-

> "***148. Power of Appellate Court to order payment pending 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 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."

16. Thus the provision lays down that in an appeal preferred by the accused against conviction and Sentence under Section 138 of the NI Act, the Appellate court may order the appellant to deposit a sum not less than 20 % of the fine or compensation amount.

17. In the case of ***S. S. Deshwal @ Colonel S.S. Deswal and Ors Vs. Virender Gandhi*** reported in ***(2019) 11 SCC 341***, the Hon'ble Supreme Court discussed this provision and held that the stipulation regarding minimum 20 % deposit is mandatory. The relevant paragraph 8 may be reproduced herein below:

"***8.*** *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 to direct the appellant-accused to deposit such sum and the*

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, though it is true that in the amended Section 148 of the NI 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. 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 filed 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 such a manner it would serve the Objects and Reasons of not only amendment 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 realize 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."

18. Subsequently, however, the aforesaid strict position underwent some dilution, and the Hon'ble Supreme Court in the case of ***Jamboo Bhandari Vs M.P. State Industrial Development Corporation & Ors*** reported in ***2023 LiveLaw (SC) 776*** has carved out a small window of exception, to be applied in exceptional circumstances. The decision in ***Jamboo Bhandari*** (supra) has also been relied upon by the learned counsel for the petitioner. The relevant paragraphs 6, 7 and 9 may be reproduced herein below:-

"***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.*

7. *Therefore, when the appellate court considers the prayer under Section 389CrPC of an accused who has been convicted for offence under Section 138 NI 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.*

9. *We disagree with the above submission. When an accused applies under Section 389CrPC 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."*

19. Thus, on the touchstone of these statutory provisions and principles laid down in case laws - the impugned order of the learned Appellate court has to be analyzed, to decide as to whether it was justified in the facts and circumstances.

20. From the position of law governing the subject matter, it is clear that normally the Appellate court while entertaining such an appeal against a conviction in a proceeding for dishonour of cheque, has to direct minimum 20 % deposit of the fine or compensation amount. A departure can be made from the same, only in exceptional circumstances.

21. In the case of ***Muskan Enterprises & Anr. Vs. State of Punjab and Anr.*** reported in ***(2024) 20 SCC 85***, a two Judge Bench of the Hon'ble Supreme Court discussed the subject matter, including the decisions in ***S.S. Deswal*** (supra) and ***Jamboo Bhandari*** (supra). The Court noticed that ***Jamboo Bhandari*** (supra) had laid down that the deposit under section 148 of the Act may not be ordered, if the Court finds the case to be of an exceptional nature in which such a deposit may not be justified. The Court in ***Muskan Enterprises*** (supra) elaborated on the said case law and enunciated certain non-exhaustive situations by way of illustrations, which might meet the standard of exceptional circumstances envisaged in ***Muskan Enterprises*** (supra). The relevant paragraphs 29, 30, 31, 32, 33 may be reproduced herein below:-

> "***29.*** *We may take the discussion a little forward to emphasise 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.

30. *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 NI 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 ipse 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.*

31. *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.

32. *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 deposit depending 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.*

33. *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."*

22. Thus, I find that in ***Muskan Enterprises*** (supra), the Hon'ble Apex Court laid down the following non-exhaustive circumstances which might justify departing from the mandatory minimum 20% deposit stipulated under section 148 NI Act and confirmed by the aforesaid case laws:-

(i) the conviction might have been recorded and sentence imposed without adherence to the mandatory procedural requirements of the NI Act prior to/at the time lodging of the complaint by the complainant rendering the proceedings vitiated, **or**

(ii) the Trial court might have rejected admissible evidence from being led and/or relied on inadmissible evidence which was permitted to be led, **or**

(iii) the Trial court might have recorded an order of conviction which is its ipse dixit, without any assessment/analysis of the evidence and/or totally misappreciating the evidence on record, **or**

(iv) 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**

(v) that the compensation awarded is so excessive and outrageous that it fails to meet the proportionality test.

23. In the backdrop of the above principles, now, I go back to the facts of this case to determine whether the impugned order was justified in the facts and circumstances of the case.

24. With regard to the contention of the petitioner side that demand notice was not properly accepted, the learned appellate Court while passing the impugned order referred to the observation of the learned trial Court that the notice was issued by registered post to the correct address and that it was also revealed from the evidence of the accused appellant that at the relevant time, her official address and residential address were the same, which was mentioned in the complaint petition.

25. The learned Appellant Court has noticed the discussion of the learned trial court that upon receiving of summons also, the accused could have paid the amount, if indeed, she did not receive the demand notice.

26. I have perused the copy of the judgment annexed with the petition. The learned trial Court relied upon the testimony of the petitioner about her official address located at the area of Dispur and the postal receipt indicating a Pin Code in the area of Dispur. The learned trial Court held that in the said area of Dispur there was unlikely to be another office of Joint Director, Health Services (Malaria) Assam.

27. The learned trial Court apart from this evidence also relied upon the demand notice exhibited by the complainant and the postal tracking receipt though it held that the postal tracking receipt solely would not be admissible evidence in terms of the governing law due to absence of a certificate under Section 65B of the Indian Evidence Act.

28. The learned trial Court has noticed that though the petitioner as accused contended that two cheques were kept in the vehicle of her husband and that the brother of the complainant might have stolen the same and misused -it was revealed from the evidence on record, as stated by the learned trial Court, that

the no proceeding (criminal or otherwise) was initiated from the side of the accused regarding any such theft or loss of cheques.

29. The learned trial Court has held that the statutory presumption came into force with regard to the accused as she admitted her signature. The learned Appellate Court while passing the impugned order has discussed these aspects including the contention regarding the cheque being allegedly stolen by the brother of the complainant. Upon perusing the impugned judgment passed by the trial Court, learned trial Court and the impugned order dated 20.05.2025 passed by the learned Appellate Court directing the 20% deposit - I am unable to hold that any or more of the illustrative exceptional circumstances enumerated in ***Muskan Enterprises (Supra)*** would be applicable to the case of the petitioner as appellant.

30. I am also unable to hold that any exceptional circumstances other than those illustrations in ***Muskan Enterprises (Supra)*** would come to the aid of the petitioner in avoiding the 20 percent deposit mandated under section 148 of the Act.

31. Consequently, the instant criminal petition seeking quashing of the impugned order dated 20.05.2025 passed by the learned Additional Sessions Judge, Barpeta, in Criminal Appeal No. 33/2025 is found to be devoid of merits and is accordingly **dismissed**.

32. In terms of section 148 of the NI Act, the 20 percent deposit is to be paid within 60 days from the order and accordingly, it was so directed by the learned Appellate Court vide the impugned order. In terms of the statutory provision of section 148 of the NI Act, the said period of 60 days can be extended by further period of 30 days upon sufficient cause being shown. In the instant case, the

total period of 90 days envisaged under section 148 of the NI Act is long over.

33. Therefore, the petitioner shall pay the 20 percent amount as directed by the impugned order immediately, failing which, the learned Appellate Court would be at liberty to take recourse to coercive measures.

34. The instant criminal petitioner stands **disposed** of.

JUDGE

Comparing Assistant