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**(2024) 12 UK CK 0097**

**Uttarakhand High Court**

**Case No:** Criminal Miscellaneous Application (U/S 528) No. 1036 Of 2024

Sushil Kumar Sharma

APPELLANT

Vs

Vivek Pandey

RESPONDENT

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**Date of Decision:** Dec. 31, 2024

**Acts Referred:**

- Negotiable Instruments Act, 1881 - Section 138, 148

**Hon'ble Judges:** Pankaj Purohit, J

**Bench:** Single Bench

**Advocate:** Ramji Srivastava, N.K. Adhikari

**Final Decision:** Dismissed

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**Judgement**

Pankaj Purohit, J

1. Heard learned counsel for the parties.

2. By means of this C528 application, applicant has challenged the order dated 02.12.2024 passed by learned Sessions Judge, Dehradun in Criminal

Appeal No.346 of 2019 Sushil Kumar Sharma Vs. State of Uttarakhand and Others, whereby, a condition was imposed that "operation of the

sentence awarded vide judgment and order dated 08.11.2024 passed by learned Third Additional Chief Judicial Magistrate, Dehradun in Complaint

Case No.10258 of 2013 Kumari Purnima Pandey Vs. Sushil Kumar Sharma, shall remain stayed during the pendency of appeal subject to deposit 20%

of total amount of fine as provided under Section 148 of NI Act within 60 days, failing which, the stay order shall automatically be vacated" and

further prayed to stay the effect and operation of the above mentioned impugned order dated 02.12.2024.

3. It is contended by the learned counsel for the applicant that as per the complaint case, it was alleged that complainant and applicant were close relatives and the complainant financially aided the applicant to the tune of Rs.13,00,000/- and the applicant assured to return the same. In lieu of the aforesaid amount, the applicant issued a cheque amounting to Rs.13,00,000/- in favour of the complainant. But, when the said cheque was presented for encashment, it was returned with remark "the account has already been closed". Thereafter, the applicant underwent trial and after following the process of law, learned third Additional Chief Judicial Magistrate, Dehradun, vide judgment and order dated 08.11.2024, convicted the applicant under Section 138 of NI Act and sentenced him to one year's simple imprisonment with fine of Rs.26,00,000/-, with default stipulation of two months additional simple imprisonment. Against this order, an appeal was filed and the impugned order dated 02.12.2024 was passed by the learned Sessions Judge, Dehradun.

4. It is further contended by learned counsel for the applicant that the Appellate Court vide order dated 02.12.2024 directed the applicant to deposit 20% of total amount of compensation, as per the mandate prescribed under Section 148 of the N.I. Act, which is reproduced as under:

"Section 148:- Power of Appellate Court to order payment pending appeal against conviction. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty 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.â€

5. It is also submitted by learned counsel for the applicant that the word â€mayâ€™ used under Section 148 of the N.I. Act makes it a non-

mandatory provision. He also relied upon the Judgment rendered by Honâ€™ble Supreme Court in SLP (Crl.) No.11906 of 2022 dated 24.11.2023

(Ashok Kumar Vs. State of Uttarakhand and Another), whereby, the Honâ€™ble Supreme Court has observed as under:

â€œDuring the course of submissions learned counsel for the appellant drew our attention to a recent judgment of this Court in the case

of Jamboo Bhandari Vs. M.P. State Industrial Development Corp. Ltd .reported in (2023) SCC OnLine SC 1144 dated 04.09.2023 and

particularly to Paragraph 6 of the said judgment, which reads as under:

â€What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, 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.

In the circumstances, we find that justice would be subserved by permitting the appellant to advance his arguments on the application

seeking waiver of pre-deposit which was dismissed by the Appellate Court and sustained by the High Court in light of the aforesaid

judgment. Consequently, the impugned order passed by the High Court sustaining the order of the Sessions Court is/are set aside. The

Sessions Court to re-consider the application filed by appellant herein seeking waiver of the pre-deposit.

It is needless to observe that the Sessions Court shall consider the said application in accordance with the observations of this Court in the aforesaid judgment and in accordance with law.

The appeal is allowed and disposed of in the aforesaid terms. Pending application(s), if any, shall stand disposed of.â€

6. Having gone through the provision of Section 148 of the N.I. Act and after taking into consideration the observations recorded by the Honâ€™ble

Supreme Court in the judgment rendered on 24.11.2023, this Court is of the considered view that in normal circumstances, the Appellate Court may be

justified in imposing the condition of deposit, as provided in Section 148 of the N.I. Act, and only in those cases, where imposing the condition of

deposit is unjust or which may deprive the accused/appellant to pursue his appeal, an exception can be drawn by deviating from the normal procedure.

In such view of the matter, this Court is of the firm opinion that the Case Law relied upon by learned counsel for the applicant in the case of Ashok

Kumar (Supra) is not applicable in the facts and circumstances of the present case.

7. In view of the foregoing reasons, this Court is not inclined to interfere in the matter. Accordingly, C528 application is dismissed, as the Court finds

that no special circumstance exists in the present case, and the condition of deposit of 20% compensation will neither be unjust nor it will amount to

deprivation of the right of appeal to the applicant.