2024 INSC 1046

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 5491/2024
[Arising out of SLP (Crl.) No. 8072/2024]

MUSKAN ENTERPRISES & ANR. **APPELLANTS**

VERSUS

THE STATE OF PUNJAB & ANR. **RESPONDENTS**

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.
2. The judgment and order dated 18th May, 2024, passed by a learned Judge of the High Court of Punjab and Haryana at Chandigarh[1] dismissing a petition[2] under Section 482 of the Code of Criminal Procedure, 1973[3] preferred by the appellants is under assail in this appeal.
3. The basic facts are not in dispute.
4. Conviction for offence punishable under Section 138 of the Negotiable Instruments Act, 1881[4] had been recorded against the appellants by the Judicial Magistrate, 1st Class, Amloh,

[1] High Court
[2] CRM-M-25041-2024
[3] Cr. PC
[4] N. I. Act

District Fatehgarh[5] vide judgment and order dated 15th September, 2022. Consequently, the second appellant (the proprietor of the first appellant) was sentenced to 2 years' rigorous imprisonment; also, under Section 357(3), Cr. PC. they were directed to pay compensation of Rs.74,00,000/- (double the cheque amount) to the complainant who was given the liberty to recover the same from the appellants.

5. The conviction and sentence, as aforesaid, were carried in appeal by the appellants before the Sessions Court, Fatehgarh Sahib[6]. While admitting the appeal by order dated 17th October, 2022, the Sessions Court suspended the sentence till disposal of the appeal. The second appellant was granted bail. Additionally, the Sessions Court directed the appellants to deposit 20% of the compensation amount awarded by the trial magistrate within a period of sixty days in the court below, being of the view that such a deposit (of 20%) was imperative. The complainant was given liberty to withdraw the deposit subject to furnishing an undertaking that the same would be returned, if the appellants succeeded in the appeal.

6. Imposition of such condition by the Sessions Court for deposit of 20% of the compensation awarded by the trial magistrate was questioned by the appellants before the High Court in a

[5] trial magistrate
[6] Sessions Court

petition[7] filed under Section 482, Cr. PC.

7. The said petition was considered by the High Court on 01st May, 2023, i.e., at a point of time when the decision of this Court in ***Surinder Singh Deswal @ Col. S. S. Deswal vs Virender Gandhi***[8] was governing the field on interpretation of Section 148 of the N.I. Act. The said decision held the condition for deposit in terms of Section 148, N.I. Act as mandatory.

8. Learned counsel appearing for the appellants had argued for some time. However, having found that his arguments would yield no fruitful result since the High Court was bound by the ratio of the decision in ***Surinder Singh Deswal*** (supra), he made a statement that the appellants would withdraw the petition. Accordingly, an order was passed to the effect that the petition stands dismissed as withdrawn.

9. Close on the heels of dismissal of the said petition of the appellants, as withdrawn, came the decision of another coordinate bench of this Court in ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Ltd. and ors.***[9]. Upon consideration of the law laid down in ***Surinder Singh Deswal*** (supra), the bench in

[7] CRM-M-21715-2023
[8] 2019 (11) SCC 341
[9] (2023) 10 SCC 446

Jamboo Bhandari (supra) proceeded to hold as follows: -

> "6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the NI 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.
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> 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."

10. Having regard to such decision, the appellants applied afresh under Section 482, Cr. PC. It is this petition which has now been dismissed by the High Court by the impugned order. The sole ground assigned by the High Court is that since the earlier petition had been withdrawn without liberty obtained to apply afresh, the subsequent petition is not maintainable.

11. We have heard learned counsel appearing for the appellants, the respondent no.2-complainant as well as the respondent no.1- State of Punjab.

12. The short question emerging for our decision is whether the

High Court was justified in dismissing the subsequent petition under section 482, Cr. PC for the reason that it assigned.

13. Having considered the materials on record as well as the rival claims, we are of the considered view that the High Court was unjustified in dismissing the subsequent petition on the ground that the appellants had withdrawn the earlier petition without obtaining leave to file afresh and, therefore, the petition under consideration was not maintainable.

14. The procedural laws governing criminal proceedings and civil proceedings in our country are quite dissimilar, though the rule of *audi alteram partem* and a procedure that is both fair and reasonable to both/all parties for rendering justice are at the heart of both the Cr. PC and the Code of Civil Procedure, 1908[10]. The principle of *res judicata*, traceable in Section 11 of the CPC, does neither apply to criminal proceedings nor is there any provision in the Cr. PC akin to Order XXIII Rule 1(3), CPC. While Section 114 of the CPC read with Order XLVII thereof empowers the civil courts to exercise the power of review, Section 362, Cr. PC bars a review. A close reading of Sections 482, Cr. PC and 115, CPC would also reflect that the purposes sought to be achieved by exercising the high courts' inherent powers, which the respective procedural laws save, are also at variance. Prudence and propriety in the decision-

[10] CPC

making process, thus, make it imperative for the high courts to not confuse the procedural laws governing criminal and civil proceedings.

15. The legal position as to whether a second petition under Section 482, Cr. PC would be maintainable or not is no longer *res integra*. We may notice a few decisions of this Court on the point.

16. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla***[11], a decision arising out of the N.I. Act, the relevant high court had given the party the liberty to avail any remedy in law, if available, at the time of withdrawing her petition under section 482, Cr. PC. This Court, observed that the high court would have the inherent power to decide any successive petition under section 482 and that it is not denuded of that power by the principle of *res judicata*.

17. That the principle of *res judicata* has no application in a criminal proceeding was reiterated by this Court in ***Devendra v. State of U.P.***[12].

18. Recently, this Court in ***Bhisham Lal Verma v. State of U.P***[13], has again held that there is no blanket rule against filing of successive petition under section 482, Cr. PC before the high court. It was also held that if such a petition is filed, it must be seen

[11] (2007) 4 SCC 70
[12] (2009) 7 SCC 495
[13] 2023 SCC OnLine SC 1399

whether there was any change in facts or circumstances, necessitating the filing of such petition.

19. Section 482, Cr. PC, on its own terms, saves the inherent powers of the high court to make such orders as may be necessary (i) to give effect to any order under the Cr. PC, or (ii) to prevent abuse of the process of any court, or (iii) to secure the ends of justice. Change of law can legitimately be regarded as a vital change in circumstance clothing the high court with the power, competence and jurisdiction to entertain the subsequent petition notwithstanding the fact that the earlier petition was withdrawn without obtaining any leave, subject to the satisfaction recorded by the high court that the order prayed for in the subsequent petition ought to be made, *inter alia*, either to prevent abuse of the process of any court or to secure the ends of justice.

20. Thus, in our considered opinion, the constricted view taken by High Court to hold that the appellants were required to obtain the leave of the Judge who had dismissed the earlier petition prior to filing the subsequent petition is clearly untenable and not warranted in law. It is noted that the appellants had applied a second time before the High Court only when the law on interpretation of Section 148, N.I. Act was laid down somewhat differently in ***Jamboo Bhandari*** (supra) and not on any other ground. It was not a review in disguise that the appellants

attempted but their endeavour was to impress the High Court to have the law, currently governing the field, to be applied in their case. In terms of the authorities referred to above, the subsequent petition was well-nigh maintainable.

21. That the decisions in ***Surinder Singh Deswal*** (supra) and ***Jamboo Bhandari*** (supra) have been rendered by benches of co-equal strength have not escaped our notice. However, notwithstanding the legal position that a cleavage of opinion is discernible owing to ***Jamboo Bhandari*** (supra) seeking to explain the law by reading a limited discretion that an Appellate Court has been conferred with by sub-section (1) of Section 148, which the decision in ***Surinder Singh Deswal*** (supra) did not read, the latter bench while deciding the matter before it having considered the decision of the former bench, it is the decision of the latter bench which is now the law.

22. Although a reference to a larger bench would have been appropriate in view of the divergent views expressed in the said decisions, we share the later view expressed in ***Jamboo Bhandari*** (supra); and, we consider it proper to assign our own reason therefor.

23. However, this must be preceded by reading Section 148 of the N.I. Act. It reads:

> "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 143-A.
> (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."
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> (emphasis supplied)

24. Law is well-settled that user of the verbs 'may' and 'shall' in a statute is not a sure index for determining whether such statute is mandatory or directory in character. The legislative intent has to be gathered looking into other provisions of the enactment, which can throw light to guide one towards a proper determination. Although the legislature is often found to use 'may', 'shall' or 'must' interchangeably, ordinarily 'may', having an element of discretion, is directory whereas 'shall' and 'must' are used in the sense of a mandatory provision. Also, while the general impression is that 'may' and 'shall' are intended to have their natural

meaning, it is the duty of the court to gather the real intention of the legislature by carefully analysing the entire statute, the section and the phrase/expression under consideration. A provision appearing to be directory in form could be mandatory in substance. The substance, rather than the form, being relevant, ultimately it is a matter of construction of the statute in question that is decisive.

25. It is also a well-accepted rule that interpretation must depend on the text and the context - the text representing the texture and the context giving it colour – and, that interpretation would be best, which makes the textual interpretation match the contextual. While wearing the glasses of the statute-maker, the enactment has to be looked at as a whole and it needs to be discovered what each section, each clause, each phrase and each word means and whether it is designed to fit into the scheme of the entire enactment. While no part of a statute and no word of a statute can be construed in isolation, statutes have to be construed so that every word has a place and everything is in its place. We draw inspiration for the above understanding of the manner of interpreting a statute from the decision of this Court in ***Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.***[14].

[14] AIR 1987 SC 1023

26. Wearing the glasses of the statute-maker, we need to read the text as set in the context. What is most significant is that the legislature has used both the verbs 'may' and shall' in sub-section (1) of Section 148, N.I. Act, but in different contexts. As we read and understand the sub-section, what we find is that the verb 'may', implies discretion; and, if intended to have its natural meaning, it would refer to the discretion left to the Appellate Court to determine as to whether such court should order any deposit to be made by the appellant or not pending hearing of the appeal against the conviction and sentence recorded by the trial court. What ***Jamboo Bhandari*** (supra) lays down is that deposit may not be ordered if the Appellate Court finds a case to be exceptional not calling for a deposit and the reasons for not ordering a deposit are recorded in the order. On the contrary, the verb 'shall' used in the same sentence and distanced from the verb 'may' by 8 (eight) words, typically implies an obligation or duty that is referable to the quantum of deposit, that is, the deposit, in any case, must not be less than 20% of the fine or compensation awarded by the trial court. What follows is that once the Appellate Court is satisfied that a deposit is indeed called for, in an appropriate case, such court's power is in no way fettered to call upon the appellant to deposit more than 20% of the awarded compensation, but in no case can it be less than 20%. Interestingly, while the proviso to

sub-section (1) and sub-section (2) of Section 148 use 'shall' in the relevant context, sub-section (3) again reverts to 'may' and its proviso to 'shall'. User of the verbs 'may' and 'shall' in different contexts in the same section is clearly suggestive of the legislative intent to mean what it said.

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.I. 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. 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 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. 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.

28. In such view of the matter and for the foregoing reasons, we are unhesitatingly of the view that the impugned order of the High Court declining to entertain the subsequent petition under Section 482, Cr. PC of the appellants is unsustainable in law. However, we do not consider the need to remit the matter to the High Court for consideration of the subsequent petition under Section 482, Cr. PC; instead, in our view, justice would be sufficiently served if the Sessions Court re-examines the issue of deposit being required to be made by the appellants in the light of the law laid down in ***Jamboo Bhandari*** (supra) and the observations made hereinabove.

29. Consequently, the impugned order of the High Court dated 18th May, 2024 and the Sessions Court's order dated 17th October, 2022, stand set aside. The matter is remitted to the Sessions Court to re-examine the issue of ordering deposit. Whether sufficient ground has been made out by the appellants to persuade the Sessions Court not to order any deposit is left entirely to its discretion and satisfaction. We do not express any opinion on the plea that the appellants have sought to advance before us, lest any party seeks to derive any advantage. All points are left open.

30. Subject to its convenience, we expect the Sessions Court to

pass an appropriate order bearing in mind the facts and circumstances presented before it as early as possible.

31. In the result, the appeal stands allowed to the extent as mentioned above.

32. Pending application(s), if any, shall stand disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(PRASHANT KUMAR MISHRA)

New Delhi;
December 19, 2024.