NEUTRAL CITATION
2025:GUJHC:58000

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 1409 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
	Yes	

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MAHADEV ENTERPRISE THRO PRUTHVI SANJAYBHAI SOLANKI & ANR.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR VICKY B MEHTA(5422) for the Applicant(s) No. 1,2
MR NRUP H PANCHAL(12800) for the Respondent(s) No. 2
MR PARICHAY N ASHAR(13304) for the Respondent(s) No. 2
MR. H. K. PATEL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE R. T. VACHHANI**

Date : 22/09/2025

ORAL JUDGMENT

Rule. Respondents waives service. Considering the issue involved in the matter, the present revision application is taken up for hearing, with the consent of learned Advocates appearing for the respective parties.

1. In the morning session, after arguing the matter at length, the learned advocate for the petitioner sought permission to have the sense of the petitioner to enable him to deposit a reasonable amount against the amount awarded by the learned first appellate court, which comes to 20% of the

NEUTRAL CITATION
2025:GUJHC:58000

cheque amount. Therefore, at the request of the learned advocate for the petitioner, the matter has been kept in the second session.

2. Though the learned advocate for the petitioner has submitted to permit the petitioner to deposit 15% of the cheque amount, subject to condition alongwith the accommodation for longer period to enable him to deposit the amount. However, the said request came to be objected by the respondent stating and contending that more than sufficient time has already been elapsed as appeal in question could not have been decided within the stipulated time, as it has crossed the period of 60 days, and therefore, also the readiness and willingness expressed by the petitioner lacks prudent. Learned advocate for the respondent has further submitted that the order in question has been passed on 17.08.2024 by the learned 8th Additional Sessions Judge, Rajkot, in criminal appeal No.491 of 2024, and the present revision application has been moved on 05.09.2024, hence, more than sufficient time has been consumed, which otherwise deprived the respondent to have the test of the fruits of the said order passed in his favour.

3. Thus, sum and substance and the core issue as emerges from the case on hand is, whether the imposition of the condition by the learned first appellate court to deposit 20% of the compensation amount awarded by the trial court is sustainable or not?

NEUTRAL CITATION
2025:GUJHC:58000

4. Having heard the learned advocates for the parties, it appears that the learned first appellate court, while considering the request of the petitioner, who being aggrieved and dissatisfied with the order passed by the learned Additional Chief Judicial Magistrate, Court No.9, Rajkot, in Criminal Case No.12772 of 2020, awarding a punishment has challenged the said order and also sought to keep the execution and operation of the order of sentence in abeyance, simultaneously moved an application under Section 389(3) of the Code of Criminal Procedure (Section 430 of the Bhartiya Nagarik Suraksha Sanhita, 2023), and the said application came to be allowed. However, subsequently, the learned first appellate court has directed the petitioner to deposit 20% of compensation amount. Hence, the present revision application.

5. Learned advocate for the petitioner, while arguing the matter, placed reliance on the decision of the Hon'ble Apex Court in the case of ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Ltd. and Ors***, and submitted that since the word "may" has been used, and therefore, the same cannot be construed as mandatory.

6. However, the learned advocate for respondent No.2 has placed reliance on Judgment of the Hon'ble Apex Court, in the case of **Muskan Enterprises & Anr. v. The State of Punjab & Anr.**, reported in **2024 INSC 1046** and has submitted that the very decision of **Jamboo *(Supra)*** has been referred to therein, and while making it clear that the legislature intended not to leave any discretion to the first appellate court, there is

NEUTRAL CITATION
2025:GUJHC:58000

little-bit sense taken as to the legislature didn't use the word "shall" instead of word "may" in sub-section(1) of Section 148 of the NI Act. Thus, while considering the facts of the matter in question wherein the discretion have been rested with the learned first appellate court to exercise the same on the basis of the material placed for consideration.

7. Now, Reverting back to the facts of the case on hand, the argument advanced by the learned advocate for the petitioner is that the learned first appellate court, while exercising power under Section 389 of the Code, had to impose off such directions which were subsequently invoked, which is not permissible. Though the learned advocate is not in a position to point out that why such powers cannot be exercised subsequently thereto, if the facts of the case and issue thereon suggest otherwise, simply because the said powers have been exercised subsequent thereto while directing the appellant, is no ground to sustain the claim of the petitioner and to deprive the respondent herein.

8. Thus, in view of the aforesaid and without much delving other aspects and considering the observations made by the Hon'ble Apex Court with regard to the issue herein, the relevant portion of the case of ***Muskan Enterprises (supra)*** is reproduced herein.

> *"7. The said petition was considered by the High Court on 01 st 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*** *was governing the field on interpretation of Section 148 of*

NEUTRAL CITATION
2025:GUJHC:58000

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.****. Upon consideration of the law laid down in* ***Surinder Singh Deswal*** *(supra), the bench in* ***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*

NEUTRAL CITATION
2025:GUJHC:58000

conclusion must be recorded."

(emphasis supplied)

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."

(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****.*

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.*

(emphasis supplied)

9. Thus, in view of aforesaid law laid down by the Hon'ble Apex Court, it emerges that when the first appellate court finds any capable of permanent opinion even in course of considering as to what may be appropriate quantum of fine or compensation to be kept in deposit the instant punishment of subsequent sentence recorded by the trial court the stance taken by is wholly incorrect and erroneous and that is only the matter of fine for the same time to set aside, and thus, the

NEUTRAL CITATION
2025:GUJHC:58000

subsequent that order to deposit would be unnecessarily burden on the part of the appellant is not sustainable, as such the opinion in form of while observing the appellant either not to deposit the 20% amount or the later thereon is again the subject matter of discretion to be exercised on the basis of the case.

10. The sum and substance of the aforesaid is, as such there cannot be any juncture that normally the discretion of the appellate court is being towards to require any deposit with the quantum of such deposit depending upon the factual situation in individual case. Thus, the question order under challenge even otherwise does not see the mark of invalidity on forehead residing of the power of the first appellate court not to order any deposit and thereby calling for exercise of discretion to not order to deposit has to be considered.

11. In continuation of aforesaid as discussed in the preceding paragraphs and also the proposition laid down by the Hon'ble Apex Court in case of ***Surinder Singh (supra)*** considering that the word "may" mentioned in the language use for Section 148 of the N.I. Act, is to be construed as the mandatory rule as under, and thus "may" would be understood as "shall". In nutshell, it is left open to exercise the power by the appellate court if the case can be considered as the case of exception by assigning the special reasons.

12. Thus, as per the case of ***Jamboo Bhandari (supra)***, though the same has been relied by the party to the petition,

NEUTRAL CITATION
2025:GUJHC:58000

whereas the Hon'ble Apex Court in the case of ***Muskan Enterprise (supra)*** has been pleased to hold that it is no longer *res-integra* that normally the appellate court would be justified in imposing the condition to deposit 20% amount as provided under Section 148 of the N.I. Act.

13. Since, as discussed hereinabove, while directing to deposit 20% amount of compensation is subject to the discretion to be exercised by the court, at the same time it becomes incumbent on the part of first appellate to pursue the first appellate court not to order any deposit that otherwise rest on the material placed on consideration, over is laps entirely to the discretion and satisfaction of the first appellate court. However, nothing sort of any such material transpires from the record nor any adverse surfaced on record, which may entitled to appellant to claim the grievance thereof.

14. In nutshell, while analyzing the statutory provision vis-a-vis the judicial pronouncement referred to hereinabove the answer to the proposition is with imposing of the condition to deposit 20% of compensation amount awarded by the trial court is sustainable while deciding the application for suspension of sentence in appeal as well as in any case particularly when the appeal is not disposed of within a period of 60 days, when the judgment of conviction and order of sentence is still awaiting for confirmation.

15. Thus, considering the order passed by the first appellate court, what is required to be kept in mind, is at once the issue

regarding to deposit 20% of compensation or fine amount payable under Section 148 of N.I. Act is decided by the concerned appellate court by following the spirit of the observation made in the judgment of ***Jamboo Bhandari (supra)*** and ***Muskan Enterprises (supra)*** and condition if any is imposed while suspending the sentence, the same would be to deal with the suspending the sentence or subsequent thereto, the same would be deemed to be just and fair and undoubtedly such condition require its fulfillment at the hand of the appellant to seek suspension rather protection from sentence.

16. In view of the provisions as well as the dictum of the Hon'ble Apex Court, it comes out without there being any doubt from the language in which the provision is couched. Thus, Section 148 of the N.I. Act is attracted only when the convict files an appeal against the judgment and continue to be on bail during the time, the said appeal is pending before the appellate court. Thus, the contention on the part of the appellant herein that the power under Section 148 of N.I. Act can be exercised only and only while suspending the sentence is not tenable as the appellate court assumes to adjudicate even to order to deposit under Section 148 of the N.I. Act at subsequent stage, only if the convict files an appeal before which in challenging the conviction of sentence, and thus the jurisdiction stays only during the pendency of the appeal and the appellate court's jurisdiction would at least on the decision of the appeal. In nutshell, the purpose behind directing to deposit as enumerated under Section 148 of the N.I. Act in

appeal is at least to recover plausible compensation amount to provide some relief to the complainant so as to save to his business. Thus, during the pendency of appeal, the first appellate court is also competent to direct to deposit upon filing of an application even by the complainant or by its own. Thus, the absence of the word “application to be filed by the complainant” in Section 148(1) of the N.I. Act is insignificant because the general need of drafting do not contemplate striving those to fail which otherwise have to initiate consequences and parallel rights provided in the statutes. It is also pertaining to note that the purpose behind annexing the aforesaid provision is that the appeal is not decided within 60 days with a plausible extension of 30 days, then also the convict has to comply with the directions, if any, pertaining to depositing the compensation amount. Admittedly, in the case on hand herein, the final disposal of the appeal before the first appellate court is yet to take place. In nutshell, the direction to deposit minimum 20% amount is admittedly not an absolute rule, but is a subject to discretion which is to be exercised by the first appellate court, keeping in mind the very provision of Section 148 of N.I. Act.

17. Thus, sum and substance as emerges from the law in question laid down by the Hon’ble Apex Court while interpretation of “may” being read as “shall” in sub-Section (1) of Section 148 of the N.I. Act. Hence, the sole discretion lies with the first appellate court while considering the surrounding circumstances of the case, so as to direct the appellant to deposit 20% amount on any of the valid grounds. Thus, the

NEUTRAL CITATION
2025:GUJHC:58000

discretion of the court simply because insertion of “may”, the power not to demeanour the first appellate court are limited to discretion confirmed by the legislature, and therefore, the power to exercise by the first appellate court rendering deposit considering the factual matrix of the case on hand, do not require any interference, as the same has been done while affording all reasonable opportunities to the party concerned, simply because the order in question having been passed subsequent to the exercise of powers under Section 389(3) of the Cr.P.C. does not stay to discard the entire exercise and the discretionary powers exercise by the Court under the provision of Section 148 of N.I. Act.

18. Thus, in view of the aforesaid, this Court does not find any substance in the present application, hence the same is dismissed. Rule is discharged.

Sd/-
(R. T. VACHHANI, J)

NITIN MAKWANA