

(2025) 01 AP CK 1552

In the Andhra Pradesh High Court, Amaravati

Case No : Criminal Petition No: 775 Of 2025

Sai Sea Foods & Ors.

APPELLANT

Vs

Areti Suryanarayana, S/O Ramarao & Ors.

RESPONDENT

Date of Decision : 28-01-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 430, 528
Negotiable Instruments Act, 1881 — Section 138, 148
Code Of Criminal Procedure, 1973 — Section 357(1), 389, 389(1)

Citation : (2025) 01 AP CK 1552

Hon'ble Judges : B V L N Chakravarthi, J

Bench : Single Bench

Advocate : Padmaja Kattunga

Final Decision : Disposed Of

Judgement

B.V.L.N. Chakravarthi, J

1. This Criminal Petition is filed by the petitioners/Accused, under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order dated 03.01.2025 passed in CrI.M.P.No.7 of 2025 in CrI.A.No.231 of 2025 by the learned X Additional District & Sessions Judge, West Godavari District at Narsapur.

2. Heard Smt.K.Padmaja, learned counsel for the petitioners and learned Additional Public Prosecutor representing the State.

3. Learned counsel for the petitioners would submit that learned Sessions Judge in the appeal against the conviction for the offence punishable under Section 138 of Negotiable Instruments Act passed the impugned order dated 03.01.2025 in CrI.M.P.No.7 of 2025 under Section 389(1) Cr.P.C., directed the petitioners to deposit 20% of the compensation amount ordered by the learned Trial Judge on or before 16.01.2025, while suspending the sentence of imprisonment awarded by the learned Magistrate. He would submit that the order of the learned Sessions Judge is not in accordance with Jamboo Bhandari v. MP State Industrial

Development Corporation Ltd's case.

4. The learned Assistant Public Prosecutor takes notice for the State and would submit that the Appellate Court has power to order the appellant to deposit such sum, which shall be a minimum of 20% of the fine or compensation amount awarded by the trial Court in an appeal against the conviction U/s.138 of Negotiable Instruments Act.

5. In a recent judgment of the Honorable Apex Court in the case of Muskan Enterprises and another versus the State of Punjab and another, observed that the Appellate Court has discretion not to order the deposit of 20% of the amount under Section 148 of the Negotiable Instruments Act in appropriate and exceptional cases. The learned Sessions Judge in the order did not specify how the present case would not fall under the category of appropriate and exceptional cases.

6. It is an undisputed fact that the petitioners were convicted for the offence under Section 138 of the Negotiable Instruments Act by the learned Magistrate. The learned Magistrate sentenced the petitioner/A-2 to suffer rigorous imprisonment for a period of two (02) years, as the petitioner/A-1 is a firm, and ordered the petitioners/A-1 and A-2 to pay Rs.87,77,842/- (Rupees Eighty Seven Lakhs, Seventy Seven Thousand, Eight Hundred and Forty Two only) as compensation to the complainant U/s.357(1) Cr.P.C. The petitioners/accused subsequently filed an appeal challenging the judgment of the learned Magistrate.

7. In the case of Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd., & Ors., referred above, the Hon'ble Apex Court held that when an accused applies under Section 389 of the Criminal Procedure Code (Cr.P.C.) for the suspension of sentence, they typically seek the grant of relief without any conditions. Therefore, when the appellants sought a blanket order, the Court had to determine whether the case fell under an exception. Consequently, when an application is filed by the appellant under Section 389 Cr.P.C. for the suspension of sentence, it is presumed that the appellant is seeking suspension without any conditions. The Court's duty is to ascertain whether the case falls under an exception or not, to impose conditions as prescribed under Section 148 of the Negotiable Instruments Act.

8. This Court after following judgments of the Hon'ble Apex Court in the case of Surinder Singh Deswal @ Colonel S.S.Deswal and others 2019 (11) SCC 341, Jamboo Bhandari Vs. M.P.State Industrial Development Corporation Limited and Others 2023 LiveLaw (SC) 776, Muskan Enterprises and another versus the State of Punjab and another 2024 INSC 1046, and reported judgment of this Court in Crl.P.No.5914 of 2024 dated 28.08.2024, held that, "normally, the Appellate Court will be justified in imposing condition of deposit as provided in section 148 of N.I.A.ct. However, in a case, whether the Appellate Court is satisfied with the condition of deposit of 20% will be unjust, exception can be made for the reason specifically recorded. Hence, when the Appellate Court considers an application

filed U/s.389(1) Cr.P.C. corresponding to Section 430 of BNSS by the drawer of the cheque (accused), who was convicted for the offence U/s.138 of Negotiable Instruments Act, the Appellant Court has to consider whether it is exceptional case which warrants grant of suspension of sentence without imposing condition of deposit of 20% of fine/compensation amount. If the Appellate Court comes to said conclusion that it is an exceptional case, reasons for coming to such conclusion must be recorded”.

9. In the case on hand, the impugned order of the learned Appellate Court does not disclose anything that the learned Appellate Court considered whether the cases in the exception or not? i.e., whether it warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount?

10. In those circumstances, the impugned order of the learned Appellate Court is set side and restored the application filed by the appellant U/s.389(1) Cr.P.C., corresponding to section 430 of BNSS before the Appellate Court. The petitioners/accused shall appear before the learned Appellate Court in 10 (ten) days from the date of receipt of copy of this order. On such appearance, the learned Appellate Court shall consider the application afresh and dispose of the same as expeditiously as possible, preferably within seven (07) days. Till then, the sentence imposed by the learned trial Court stands suspended. If the petitioners/accused fails to appear before the learned Appellate Court as directed above, the Criminal Petition stands dismissed without recourse to the Court.

11. Accordingly, the Criminal Petition is disposed of at the stage of admission.

As a sequel, miscellaneous applications pending, if any, shall stand closed.