* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on: 01.09.2026***
Judgment pronounced on: 09.09.2026

\# **CNR No. DLHC010551462023**

\+ **CRL.M.C. 9373/2023, CRL.M.A. 35060/2023 & CRL.M.A. 30405/2025**

ARUN MALHOTRA .....Petitioner
Through: Ms. Simran Khurana, Advocate.

versus

STATE GOVT. OF NCT OF DELHI AND ANR. .....Respondents
Through: Mr. Utkarsh, APP for the State with SI Sunil Yadav, P.S. Ambedkar Nagar.
Mr. Prem Kandpal, Advocate for respondents no. 2 and 3.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the complainant in CC No. 11160/2017 on the file of Metropolitan Magistrate (NI Act-03), South District, Saket Courts, Delhi challenges the order dated 13.12.2023, whereby he has been directed to return the amount of ₹5,44,000/-, deposited under Section 148 of the Negotiable

Instruments Act, 1881 (the NI Act) by respondent nos. 2 and 3 herein and later released in his favour during the pendency of the appeal by the appellate court.

2. The petitioner herein instituted complaint case bearing No. 11160/2017 under Section 142 of the NI Act alleging commission of offence punishable under Section 138 of the NI Act by the second and third respondents herein. As per judgment dated 22.10.2021 and order on sentence dated 18.11.2021 the jurisdictional magistrate found both the accused persons, that is, respondent nos. 2 and 3 herein guilty of having committed the offence punishable under Section 138 of the NI Act and hence convicted and sentenced them to pay a fine of ₹27,20,000/- jointly and severally, which was to be paid as compensation to the petitioner/complainant within a period of 45 days.

2.1. Aggrieved by the trial court judgement, both the accused persons/respondents 2 and 3 herein, filed Criminal Appeal No. 134

of 2021 before the Court of Session. As per order dated 01.10.2022, the appellate court allowed the application filed under section 148 of the NI Act and the respondents were directed to deposit 20% of the fine amount, that is, ₹5,44,000/-, imposed by the trial court in the form of Fixed Deposit Receipt (FDR) within 60 days, in the name of the petitioner/complainant. Thereafter, the appellate court, after hearing both sides *vide* judgment dated 30.10.2023, set aside the judgment of conviction and sentence of the trial court, and acquitted respondent nos. 2 and 3 of the offence punishable under Section 138 of the NI Act.

2.2. After the appeal was disposed of, the parties are seen to have approached the trial court. The trial court *vide* impugned order dated 13.12.2023, directed the petitioner herein to refund the sum of ₹5,44,000/- to the accused persons, *viz.*, respondents 1 and 2 herein. Aggrieved, the petitioner/complainant has filed the present petition.

3. It was submitted by the learned counsel for the petitioner/complainant that there is no statutory mandate requiring the refund of the deposited amount once the accused is acquitted, nor was there any independent application moved by the respondents seeking such refund. The impugned order was passed in haste without considering that the matter is *sub judice* before this Court in the present proceedings, and without granting adequate opportunity to the petitioner to raise his objections. It was also pointed out that the Apex Court, by order dated 22.08.2025 in SLP (Crl) No. 12216/2025, has not specifically directed the release of ₹5,44,000/- to the respondents. It was also pointed out, that if at all refund could have been directed, the same could be done only by the appellate court and not by the trial court.

4. *Per contra*, it was submitted by the learned counsel for respondent nos. 2 and 3/accused persons that there is no infirmity in the impugned order and hence no interference is called for. The

learned Additional Public Prosecutor for the State invited the attention of the Court to Annexure P-9, the order dated 01.10.2022 of the Additional Sessions Judge, wherein it has been explicitly stated that the petitioner had undertaken to repay/refund the amount received by him subject to the final disposal of the appeal.

5. Heard both sides and perused the materials on record.

6. The only point that arises for consideration in this petition is whether there is any infirmity in the impugned order calling for an interference by this Court.

7. On 30.04.2025 when this petition came up for consideration, this Court directed the petitioner/complainant to deposit the amount of ₹5,44,000/- with the Registrar General of this Court within three weeks. On 19.08.2025, the petitioner/complainant apprised this Court that they had moved the Apex Court challenging the order dated 30.04.2025 and so sought an adjournment. It was submitted that in the event of the petitioner

failing to obtain any relief from the Apex Court, he would comply with the order dated 30.04.2025 within a period of one week. The Hon'ble Supreme Court dismissed the Special Leave Petition moved by the petitioner herein as per order dated 22.08.2025 in SLP (Crl.) No. 12216/2025.

8. Despite directions being passed by three different courts, the petitioner/complainant failed and neglected to comply with the same and continued to retain the amount of ₹5,44,000/-. On 01.04.2026, it was brought to the notice of this Court that orders dated 30.04.2025 and 19.08.2025 have not been complied with. On the said date, there was no representation for the petitioner/ complainant also. Hence, the petitioner/complainant was directed to appear in person or through counsel on the next date of hearing which was on 06.04.2026. On the said date, along with the present petition, CRL.L.P. 586/2023, CRL.M.A. 31972/2023, CRL.M.A. 35060/2023 and CRL.M.A. 30405/2025 came up for

consideration. The order of this Court dated 06.04.2026 reads thus:-

> *"7. After the order in CRL.L.P. 586/2023 was dictated and the date given, it was brought to the notice of this Court by the learned counsel for the respondent in CRL.M.C. 9373/2023 that there has been repeated violation or non-compliance of the orders of this Court which has been noticed by this Court on 01.04.2026 and the appellant was directed to appear in person or through his counsel positively on the next date of hearing which was on 04.04.2026. However, on 04.04.2026, the lawyers abstained from work and, therefore, the matter was adjourned to this day for the appearance of the appellant in person or his counsel. However, Advocate Jai Batra, who had appeared online in CRL.L.P. 586/2023, is not available despite this Court repeatedly asking whether the counsel was available online.*
>
> *8. Therefore, both the cases shall stand posted to tomorrow. The date already given in CRL.L.P. 586/2023 shall stand cancelled.*
>
> *9. It is made clear that the appellant in CRL.M.C. 9373/2023 shall be present in person tomorrow positively along with his counsel.*
>
> *10. List both the petitions on 07.04.2026."*

9. On 07.04.2026, it was submitted on behalf of the petitioner/ complainant that a DD dated 07.04.2026 for an amount of ₹5,44,000/- has been produced. The same was directed to be deposited before the Registrar of this Court who was to comply with the directions of the Apex Court in order dated 22.08.2025 in SLP (Crl.) No. 12216/2025.

10. Therefore, it can be seen that the petitioner/ complainant tried his best not to comply with the orders of this Court and it was only when he was left with no choice, he deposited the amount.

11. Here it would be apposite to refer to Section 148 of the NI Act, which reads:-

> *"**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 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)

12. While sub-section (1) empowers the Appellate Court to direct a deposit pending appeal, the proviso to sub-section (3) unequivocally says that upon the acquittal of the accused, the Court "shall direct the complainant to repay to the appellant the

amount so released" along with interest within 60 days, which is further extendable by 30 days. Therefore, the statute leaves no scope for the petitioner/complainant to retain interim compensation once the judgment of conviction has been set aside.

13. As noticed earlier after the appeal was disposed of by the Sessions Court, it is seen that the parties approached the trial court for release of the amount that was deposited by the respondents herein before the Appellate Court under 148 of the NI Act. It is true that the refund order should have been passed by the Appellate Court instead of the trial court. However, in the light of the subsequent developments in the case as revealed from the orders hereinabove referred to, this Court is not inclined to set aside the impugned order on the said sole ground. The petitioner/ complainant is seen to have resorted to all steps to see that the orders of this Court despite specific directions being given, was not complied with. When he moved the present petition as well as

leave to appeal against the judgment of acquittal of the appellate court, in all fairness he ought to have deposited the amount before this Court. That was never done. It was only when the petitioner/ complainant was left with no choice, the amount was deposited.

14. The order of the Hon'ble Supreme Court in SLP (Crl.) NO. 12216/2025 dated 22.08.2025 reads thus:-

> *"1. We are not inclined to interfere with the impugned judgment and order of the High Court; hence, the special leave petition is dismissed.*
>
> *2. We, however, clarify that the sum of Rs.5,44,000/- (Rupees five lakh forty four thousand) only must be deposited by the petitioner before the Appellate Court, whereupon such court shall ensure that the said sum is invested in a short-term interest-bearing fixed deposit account of a nationalized bank. The deposit shall be kept renewed till such time further orders are passed by the High Court.*
>
> *3. Pending application(s), if any, shall stand disposed of."*
>
> (Emphasis Supplied)

15. It was submitted by the learned counsel for the petitioner/ complainant that though the SLP was dismissed, the Apex Court has still directed that the amount needs to be deposited in a fixed

deposit and not to be released to the respondents herein. It is true that the amount was directed to be deposited before the Appellate Court and it was the Appellate Court and not this Court which was directed to renew the fixed deposit until further orders were passed by this Court. The Apex Court has not in any way prevented this Court from finally disposing of this CRL.M.C. Therefore, I proceed to consider the CRL.M.C on merits.

16. The relevant portion of the order dated 01.10.2022 passed by the Special Judge, NDPS/ASJ (South), Saket Courts, Delhi in the application under Section 148 of the NI Act reads thus:-

> *".....Accordingly, the application u/s 148 NI Act is allowed. The appellant is directed to deposit 20% of the fine amount as awarded by the Ld. Trial Court. The amount be deposited within 60 days from today in the form of an FDR. The said FDR should be in the name of the respondent and shall be released to the respondent as and when requested. <u>The respondent undertakes to repay this amount / FDR so received by him, subject to the disposal of this appeal</u>."*
>
> (Emphasis Supplied)

17. In the light of the undertaking given by the petitioner/ complainant before the appellate court and in the light of the proviso to Sub-section (3) to Section 148 of the NI Act, the petitioner/complainant is bound to refund the amount to respondent nos. 2 and 3 as the appeal has ended in an acquittal. Hence, I find no merits in the present petition and the same is dismissed with liberty to the respondents herein, that is, respondent nos. 2 and 3 to withdraw the amount that has been deposited by the petitioner/ complainant herein pursuant to the orders of this Court dated 07.04.2026.

18. Application(s), if any, pending shall stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

SEPTEMBER 09, 2026/kd