

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Revision No. 1552 of 2003 O&M)
Date of Decision: 26.08.2015**

Hans Raj

...Petitioner(s)

Versus

Rajinder Kumar

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Gaurav Chopra, Advocate
for the petitioner(s).

None for the respondent.

HARI PAL VERMA J.(Oral)

Petitioner-Hans Raj son of Lekh Raj has filed the present revision petition against the order dated 4.7.2003 passed by learned Additional Sessions Judge, Ferozepur, whereby, the appeal against the order dated 28.7.2001 passed by Sub-Divisional Judicial Magistrate, Abohar, convicting and sentencing him for RI for one year and to pay fine of Rs.2,000/-, has been dismissed, being barred by limitation.

Briefly stated, Rajinder Kumar son of Gulab Rai had filed a complaint against the petitioner under Section 138 of the Act read with Section 406/420 IPC, whereupon learned Sub-Divisional Judicial Magistrate, Abohar, vide judgment dated 28.7.2001, has convicted the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, "the Act") and sentenced him to undergo rigorous imprisonment for one year and to pay a sum of Rs.2,000/- as fine. The relevant part of the judgment of the trial reads as under:-

"16. After carefully considering the evidence brought on record on behalf of the complainant, I have reached at a considered opinion that complainant has successfully proved that in order to discharge a legal and enforceable debt the accused issued cheques Ex.C-1 and Ex.C-2 of Rs.12,000/- each in favour of the complainant on 10.12.1998 and 16.12.1998, which on presentation before the drawee bank through banker of the complainant on 10.12.1999, were dishonoured vide memo Ex.C-3 and the accused failed to make the payment of the amount of cheques in question despite due service of 15 days demand notice dated 16.12.1999, copy of which is Ex.C-4, which he received vide acknowledgement Ex.C-5. So, I hold the accused guilty and convict him for having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Let the accused be heard on the quantum of sentence."

The aforesaid judgment of conviction and sentence was made subject matter of challenge by the petitioner by way of appeal before learned Additional Sessions Judge, Ferozepur. However, as the appeal was filed beyond the period of limitation prescribed under the law, the appeal was accompanied by an application under Section 5 of the Limitation Act, 1963. The said application was decided vide order dated 30.10.2001, whereby the delay in filing the appeal was condoned subject to payment of Rs.500/- as costs, to be paid to the complainant. But as the aforesaid amount was not paid by the petitioner, the appeal preferred by him against the judgment dated 28.7.2001 was dismissed by learned Additional Sessions Judge, Ferozepur, being barred by limitation, vide order dated 4.7.2003.

It is against the order dated 4.7.2003, the petitioner has filed the present revision petition.

Learned counsel for the petitioner contends that in fact learned Additional Sessions Judge, Ferozepur has dismissed the appeal merely on the ground of limitation, which is hardly of eight days. The aforesaid delay was though condoned, but it was subject to deposit of Rs.500/- as costs, which the petitioner could not deposit on account of some communication gap. However, the petitioner had already deposited the fine of Rs.2,000/- imposed by the trial Court. Moreover, as against the total awarded sentence of one year, the petitioner had already remained in custody for about 2 months and 5

days.

Learned counsel for the petitioner further submitted that he does not wish to contest the judgment of conviction on merits and the sentence awarded to the petitioner be reduced to the period already undergone, for which, the petitioner is ready to pay a consolidated amount of ₹50,000/- to the complainant-respondent. He submits that the cheque amount is Rs.24,000/-.

It is not in dispute that the appeal filed by the petitioner against the judgment dated 28.7.2001 was dismissed not on merit, but only on the ground of limitation. The delay was of eight days. Further, despite having been issued notice to the respondent-complainant, no one has put in appearance on his behalf, the prayer made on behalf of the petitioner to reduce the sentence, as undergone, seems to be just and fair.

Keeping in view the limited prayer of the counsel for the petitioner that he does not want to contest the judgment of conviction in case the sentence is reduced to the period already undergone, the request of the petitioner is accepted. Accordingly, upholding the conviction of the petitioner, the sentence awarded to the petitioner is reduced to the period already undergone by him subject to deposit of ₹50,000/- with the trial Court within a period of two months from today. The trial court shall disburse the aforesaid amount of ₹50,000/- to the respondent, for which, the petitioner shall make an appropriate application before the trial Court.

It is made clear that in case the petitioner fails to deposit ₹50,000/- before the trial Court, as aforesaid, this revision shall be deemed to have been dismissed and the petitioner shall have to undergo the remaining period of sentence as per judgment passed by the trial Court.

The revision petition is disposed of with the aforesaid modification of sentence by upholding the judgment of conviction but by reducing the same as undergone.

Registry is directed to supply a copy of this judgment to the respondent free of cost.

August 26, 2015
AK

(HARI PAL VERMA)
JUDGE