

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

CRR-2267-2005 (O&M)

Date of Decision: December 02, 2015

Baldev Singh

.....Petitioner

Versus

Vinod Kumar Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Kanwal Goyal, Advocate, for
Mr. Amarjit Markan, Advocate,
for the petitioner.

Mr. Vishal R. Lamba, Advocate, for
Mr. Vaibhav Jain, Advocate,
for the respondent.

.....

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

NARESH KUMAR SANGHI, J.(Oral)

At the very outset, learned counsel for the petitioner
submits that in view of the concurrent findings of both the Courts

below, he would not contest the verdict of conviction of the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. However, he submits that petitioner is a labourer and on account of his necessities in the year 2001, the respondent/complainant might have extended the financial help to him (petitioner); for last more than 13 years, the petitioner is facing the agony of trial, appeal and of the present criminal revision petition; the petitioner has already suffered incarceration for 5 months and 8 days as per the custody certificate produced before this Court at the time of suspension of his sentence on 08.05.2006; petitioner is neither required nor involved in any other case and, as such, he is a first offender; the fine imposed by learned Court below has been deposited by the petitioner and that the petitioner was released on bail on 08.05.2006, after suspension of his sentence by this Court, and now it would not be advisable to send him to jail once again after expiry of more than 9 years.

Mr. Vishal R. Lamba, Advocate, proxy counsel for the respondent has no objection to the first prayer of learned counsel for the petitioner. However, he submits that the learned Courts below have already taken a lenient view while awarding the

sentence, therefore, there is not much scope for further reduction of the substantive sentence.

I have heard learned counsel for the parties and with their able assistance, gone through the material available on record.

Though, learned counsel for the petitioner has opted not to challenge the conviction of the petitioner, but to satisfy the conscience of this Court, the material available on record has been scanned with the active assistance of both the counsel.

The facts of the case are that Vinod Kumar Sharma-respondent/complainant, had given a sum of ₹ 1,20,000/- (Rupees one lac twenty thousand only) in cash to Baldev Singh-petitioner, on 15.06.2001 and the petitioner had agreed to return the said amount alongwith interest @ 18% per annum. On 01.09.2002, the petitioner issued Cheque No. 026089 for ₹ 1,47,100/- (Rupees one lac forty seven thousand and one hundred only) in favour of respondent/complainant regarding the above said debt, including interest. On presentation, the said cheque bounced, since there was no sufficient fund in the bank account of the petitioner.

After completing the formalities, the complaint for prosecution of the petitioner was presented by the respondent.

In support of the complaint, the petitioner appeared as CW-1 and also examined Amarjit Singh (CW-2), a Manager of Punjab National Bank. Certain documents were also produced.

After completion of the complainant's evidence, the petitioner was examined in terms of Section 313, Cr.P.C., and all the incriminating material available on record was put to him. The petitioner denied all the allegations and pleaded innocence.

In defence, the petitioner examined Kuldeep Singh (DW-1), a clerk from Punjab National Bank to prove the statement of the Bank account of the respondent/complainant.

After going through the deposition of the complainant's witnesses as well as defence evidence available on the lower Court record and further perusing the judgments of both the Courts below, this Court finds that the verdict of guilt returned against the petitioner is well based and, as such, learned counsel for the petitioner has correctly opted not to challenge the conviction.

There appears to be substance in the alternative submissions of learned counsel for the petitioner that for the last more than 13 years, the petitioner is facing the agony of trial, appeal and the present criminal revision petition; the petitioner is a labourer and for personal necessity, he had obtained the amount from the respondent, which he could not pay; the petitioner is neither required nor involved in any other case and, as such, a first offender; the petitioner remained on bail during the pendency of the trial, appeal and the present criminal revision petition, but he did not misuse the concession of bail; the petitioner had already suffered incarceration for 5 months and 8 days as stated by learned counsel for the petitioner and that in view of the facts and circumstances of the case, the substantive sentence awarded to the petitioner appears to be on higher side, therefore, the substantive sentence is reduced to rigorous imprisonment for 6 months. The fine imposed and the sentence passed in default thereof would remain undisturbed.

In view of the above modification in the order of sentence, the present criminal revision petition is partly allowed.

December 02, 2015
apurva

(NARESH KUMAR SANGHI)
JUDGE