

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

**CRR No. 3470 of 2015 (O&M)
Date of Decision: 01.12.2015**

Joginder Singh

.....Petitioner

Versus

M/s. Naveen Textiles and another

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. N.S. Bhinder, Advocate
for the petitioner.

Mr. Ashish Gupta, Advocate
for respondent no.1.

Mr. Deep Singh, AAG, Punjab.

ANITA CHAUDHRY, J.

The present revision petition has been filed by the petitioner against the order dated 19.08.2015, passed by the Addl. Sessions Judge, Faridkot, vide which, impugned order of conviction and sentence dated 27.10.2014 was upheld vide which the petitioner was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo imprisonment for a period of six months and to pay of Rs.5,000/-. In default of payment of fine the accused was to undergo further imprisonment for 15 days.

The accused was a cloth merchant and the complainant was a stockist and whole-seller of clothes. Accused-petitioner took the goods on credit on various dates and thus an amount of Rs.1,67,425/- was due towards the accused. In lieu of legally enforceable debt, accused issued four cheques in favour of the complainant as a partial amount of Rs.17,500/-. When the complainant presented the cheques, the same were returned dishonoured with the remarks "Exceeds Arrangements/Funds insufficient". The complainant served a legal notice dated 09.01.2012 to the accused but the accused failed to pay.

Preliminary evidence was examined and the accused was summoned by the Magistrate vide order dated 06.06.2012 to face trial for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Notice of accusation was served for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

To prove the allegations, the complainant examined himself as CW1 and deposed by way of duly sworn affidavit Ex.CW1/A, besides tendering documents Ex.C1 to C14.

After closure of evidence, statement of accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to the accused which he denied and pleaded false implication. He was called upon to lead evidence in defence. In defence evidence, accused examined Balbir Singh as DW1 and closed defence evidence.

The trial Court on appraisal of the evidence convicted and sentenced the accused to the imprisonment mentioned aforesaid. The accused preferred an appeal which was dismissed by Additional Sessions Judge, Faridkot and accused was taken into custody.

Feeling dis-satisfied with both the verdicts, the accused-petitioner has preferred the present revision.

The matter was argued at length. The counsel for the petitioner was asked as to whether any complaint was made to the police regarding mis-user of the cheques and whether the accused had made any statement under Section 313 Cr.P.C. that there were earlier transactions as well, the counsel for the petitioner restricts his prayer only to the quantum of sentence. I have heard learned counsel for the petitioner-accused as well as learned counsel appearing for the respondent-complainant. The counsel for the petitioner urges that the petitioner is 80 years old and he has already undergone 3½ months of custody out of 6 months and the cheque was only for a sum of Rs.17,500/- and a lenient view be taken.

There is no documents from which the age of the petitioner can be ascertained. The counsel for the complainant also has no information with respect to his age. Accepting the prayer made by the petitioner, considering the age and other circumstances, the sentence awarded to the petitioner is reduced to already undergone. There would be no modification with regard to

the sentence of fine, which has already been paid. The petitioner be released forthwith in this case, if not required in any other case. A copy of this judgment be sent to the Courts below.

With the above modification alone, the revision petition stands disposed.

(Anita Chaudhry)
Judge

01.12.2015
'Sunil Sehgal'