

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

Criminal Revision No.110 of 2015
Date of Decision:-26.07.2016

Kamal Gulati

...Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr.Sumeet Singh Deol, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

Mr.Manish Bansal, DAG, Haryana.

Mr.Rajesh Gupta, Advocate for respondent No.2.

HARI PAL VERMA J.(Oral)

Petitioner, namely, Kamal Gulati has filed the present revision petition against the judgment dated 08.01.2015 passed by learned Sessions Judge, Ambala, whereby his appeal against the judgment of conviction dated 14.11.2013 and order of sentence dated 15.11.2013 passed by learned Judicial Magistrate Ist Class, Ambala in Criminal Complaint No. 1094/2 of 2011 titled as “Surinder Bansal Vs. Kamal Gulati” was dismissed.

Briefly stated, respondent No.2-Surinder Bansal has filed a complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity “the Act”).

As per the allegations in the complainant, the accused-petitioner was one of his close friends and accused alongwith his wife in

the month of March 2011, had approached the complainant and shown their dire need of Rs.30,000/- and in the light of friendly relation, the complainant advanced a sum of Rs.30,000/- in cash to the accused after withdrawing the same from his account, subject to return the same as per their assurance by second week of July, 2011. The accused did not make the payment as per his assurance and with a great efforts they both issued a cheque bearing No.305235 dated 20.07.2011 for Rs.30,000/- (hereinafter to be referred as the cheque in question) drawn on ICICI Bank Limited in favour of the complainant. Thereafter, the complainant presented the cheque in question in the bank, but the same was dishonoured by the bank with the remarks "Funds insufficient" vide memo dated 30.07.2011. The complainant sent legal notice dated 09.08.2011 to the accused through registered post with acknowledgment due and courier as well but the said legal notice was received back with the report of refusal. Despite that, the accused did not make the payment of the cheque in question, compelling the respondent No.2.-complainant to file the complaint under Section 138 of the Act.

The petitioner was summoned for offence punishable under Section 138 of the Act and notice of accusation was served upon him vide order dated 23.04.2012. The petitioner did not plead guilty and claimed trial.

The trial Court vide judgment dated 14.11.2013 held the petitioner guilty for offence punishable under Section 138 of the Act and vide separate order of sentence dated 15.11.2013 sentenced him to undergo simple imprisonment for a period of two months and to pay cheque amount

of Rs.30,000/- to the complainant as compensation.

Agrieved against the said judgment of conviction and order of sentence, the accused-petitioner filed an appeal, but the learned Appellate Court did not interfere in the said judgment passed by the trial Court convicting the petitioner and dismissed the appeal.

It is in the aforesaid circumstances the petitioner filed the present revision petition.

When this case was listed on 27.01.2015, this Court has passed the following order:-

“CRR-110 of 2015

Heard.

Admitted.

CRM-1265 of 2015

The learned counsel for the petitioner states that he is ready and willing to pay Rs.50,000/- as against the cheque amount of Rs.30,000/-. The learned counsel for respondent No.2, on instructions, states that the same is acceptable to respondent No.2/complainant.

Custody Certificate dated 21/22.01.2015, issued by Superintendent Central Jail, Ambala, has been filed in the Court. The same is taken on record. As per the custody certificate, the applicant has already undergone 14 days, out of the substantive sentence of 02 months, awarded in a complaint case under Section 138 of the Negotiable Instrument Act, 1881. The present revision petition is admitted on today itself and is not likely to be decided in the near future. Therefore, no purpose would be achieved in keeping the applicant under further incarceration.

Without expressing any opinion on the merits of the case, the present application is allowed and the sentence

of the applicant-petitioner is suspended during the pendency of the revision petition, on his furnishing bail bonds to the satisfaction of CJM/Duty Magistrate, Ambala.

However, it is made clear that in case, the agreed amount is not paid within the stipulated period, the present order shall be deemed to be dismissed without further notice.”

Learned counsel for the petitioner submits that pursuant to the aforesaid order dated 27.01.2015, the petitioner has paid total amount of Rs.50,000/- as against the cheque amount of Rs.30,000/- to respondent No.2. He further submits that as against the awarded sentence of 02 months, the petitioner remained in custody for 14 days. He confined his arguments on the point of quantum of sentence and further prayed that the sentence awarded to the petitioner may be reduced to the period already undergone.

Learned counsel for respondent No.2/complainant has accepted the amount of Rs.50,000/- as against the cheque amount of Rs.30,000/- and fairly submits he has no objection in case the sentence awarded to the petitioner may be reduced to the period already undergone.

Heard.

Vide order dated 27.01.2015, this Court had admitted the present revision petition and further ordered the release of the petitioner on bail.

Although the scope of interference by this Court in revisional jurisdiction is very limited, however, taking into consideration the fact that the petitioner has already deposited the compensation amounting to

Rs.50,000/-, as against the cheque amount of Rs.30,000/- with the trial Court, coupled with the fact that he remained in custody for 14 days and is facing the agony of a protracted trial since the year 2011, when the complaint was filed, I am of the opinion that ends of justice would be met if the sentence of the petitioner is reduced to the period already undergone by him.

It is not in dispute that the offence under Section 138 of the Act though is criminal in outlook but has a civil liability as well. Considering the custody of the petitioner as well as the fact that the petitioner is a first time offender, the sentence awarded to the petitioner is reduced to the period already undergone by him.

Accordingly, the impugned judgment of conviction dated 14.11.2013 and order of sentence dated 15.11.2013 passed by learned Magistrate and affirmed by the lower Appellate Court with modification, are upheld. However, the impugned order of sentence is modified to the aforesaid extent.

With aforesaid modification in the order of sentence, the instant revision petition stands dismissed.

(HARI PAL VERMA)
JUDGE

July 26, 2016
Anjal

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No