

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

Criminal Revision No.1095 of 2016

Date of Decision:-30.11.2016

Naresh Kumar

...Petitioner

Versus

Ramandeep Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr.Gaurav Sethi, Advocate for the petitioner.

Mr.Vipin Sharma, Advocate for
Mr.S.M. Sharma, Advocate for respondent No.1.

Mr. Vishal Garg, DAG, Haryana.

HARI PAL VERMA J.(Oral)

Petitioner, namely, Naresh Kumar, has filed the present revision petition against the judgment dated 23.02.2016 passed by learned Addl. Sessions Judge, Ambala, whereby his appeal against the judgment of conviction dated 27.10.2014 and order of sentence dated 29.10.2014 passed by learned Judicial Magistrate Ist Class, Ambala in Criminal Complaint No. 202 of 2013 titled as “Ramandeep Singh Vs. Sh. Naresh Kumar” was dismissed.

Briefly stated, complainant-respondent No.1-Ramandeep Singh son of Sh. Manjeet Singh, 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 complaint, the accused-petitioner was having cordial relations with the complainant-respondent No.1 from the last 5-6 years and approached the complainant for financial help, as he was in urgent need of money for two months, and as such, the complainant accepted his request and advanced a loan of

Rs.2,00,000/- on 18.10.2012 to the accused, who in discharge of his liability to repay the loan amount, had issued a *cheque No.238498, dated 24.12.2012* for an amount of Rs.2,00,000/- drawn on Union Bank of India, but when the complainant-respondent No.1 presented the said cheque for the collection, the same was dishonored with the remarks "Funds Insufficient". On receipt of the memo, legal notice was served upon the accused-petitioner. Despite that, the accused did not made the payment, compelling the complainant-respondent No.1 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, to which he did not plead guilty and claimed trial.

The trial Court vide judgment dated 27.10.2014 held the petitioner guilty for offence punishable under Section 138 of the Act and vide separate order dated 29.10.2014 sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- for committing the said offence.

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 11.05.2016, this Court has passed the following order:-

“Learned counsel for respondent no.1 showing magnanimity in the matter very fairly states that respondent no.1 is ready to accept a total sum of Rs.1 lac as against the cheque amount of Rs.2 lacs.

Learned counsel for the petitioner has accepted the offer made by learned counsel for respondent no.1 and accordingly, handed over an amount of Rs.50,000/- to learned counsel for respondent no.1 in Court and has undertaken that the petitioner shall pay the balance amount of Rs.50,000/- within one month from today.

List again on 8.7.2016.

In the meanwhile, the sentence of the petitioner is suspended subject to furnishing of his bail bonds/surety bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Ambala.

CRM-9355-2016 shall stand disposed of.”

Learned counsel for the petitioner submits that pursuant to the aforesaid order dated 11.05.2016, the petitioner has paid the remaining amount of Rs.50,000/- to the complainant-respondent No.1, vide bank draft bearing *No.107037 dated 10.06.2016* of Corporation Bank. He has produced a photocopy of bank draft and receipt dated 10.06.2016 executed by the complainant-respondent No.1 in Court today which are taken on record. In this manner, he has paid the entire agreed amount to respondent No.1. He further submits that as against the awarded sentence of 01 year, the petitioner remained in custody for 02 months 16 days. He confined his arguments on the point of quantum of sentence and prayed that the sentence awarded to the petitioner may be reduced to the period already undergone.

Learned counsel for respondent No.1/complainant fairly submits that he has no objection in case the sentence awarded to the

petitioner is reduced to the period already undergone. The complainant has been paid the agreed amount and nothing is outstanding against the petitioner-accused.

Heard.

It is not in dispute that the offence under Section 138 of the Act though is criminal in nature, but has a civil liability as well.

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 paid the agreed amount of Rs.1,00,000/- to respondent No.1, coupled with the fact that he remained in custody for 02 months and 16 days and is facing the agony of a protracted trial since the year 2013, 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.

Accordingly, the impugned judgment of conviction dated 27.10.2014 and order of sentence dated 29.10.2014 passed by learned trial Court and affirmed by the lower Appellate Court, are upheld. However, the impugned order of sentence is modified to the aforesaid extent that the sentence awarded to the petitioner is reduced to the period already undergone by him.

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

(HARI PAL VERMA)
JUDGE

30.11.2016
Anjal

Whether speaking/reasoned? Yes

Whether reportable? Yes/No