

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 231

Criminal Revision No.2722 of 2015 (O & M)

Date of Decision: *February 12, 2016*

Amit Rama

..... PETITIONER

VERSUS

Mahender Sharma

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

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?

...

PRESENT: - Mr. G.C. Shahpuri, Advocate, for the petitioner.

Mr. Gaurav Kathuria, Advocate, for the respondent.

Mr. S.S. Pannu, Deputy Advocate General, Haryana.

. . .

Jaspal Singh, J

1. The instant revision petition has been preferred by Amit Rama against judgment dated July 9, 2015 passed by the Additional Sessions Judge, Faridabad, whereby judgment of conviction dated September 24, 2013 and order of sentence dated September 26, 2013 passed by the Judicial Magistrate 1st Class,

Faridabad, in criminal complaint No.RBT 702 of 2012, titled 'Mahender Sharma vs. Amit Rama' under Section 138 of Negotiable Instruments Act, 1881 (for short, 'Act'), has been upheld. The petitioner was convicted and sentenced by the trial court to undergo RI for a period of one year and fine to the tune of ₹ 7,04,000/-, to be payable to the complainant as compensation, under Section 138 of the Act and in default of payment of fine, to further undergo simple imprisonment for two months.

2. Briefly stated, a complaint under Section 138 of the Act was lodged against the petitioner by complainant – respondent on the allegations that petitioner had borrowed ₹ 6,12,000/- as friendly loan in July 2011 from the complainant and he agreed to repay the same in January 2012 but he did not do so. Petitioner issued a cheque bearing No.868792 dated January 10, 2012 of ₹ 6,12,000/- drawn on UCO Bank, Thomson Press (I) Ltd., Delhi – Mathura Road, Faridabad, however, the cheque, on presentation, was returned un-encashed due to insufficiency of funds vide memo dated January 30, 2012. Petitioner was served with a legal notice dated February 16, 2012 for making payment within 15 days, which was received by him on or about February 18, 2012. But despite that, he did not pay the amount. Hence, the complaint under Section 138 of the Act was lodged.

3. After preliminary evidence, accused was summoned to face trial vide order dated April 2, 2012. On appearance, petitioner was given notice under Section 138 of the Act, to which, he pleaded not guilty and claimed trial. In support of his case, complainant examined himself as CW-1 and tendered into evidence his affidavit Ex.CW-1/A and relied upon documents Ex.C1 to Ex.C4.

4. Incriminating circumstances appearing in the prosecution evidence were put to accused in his statement under Section 313 Cr.P.C. who denied the same and pleaded innocence. He denied of taking any friendly loan from the complainant. He further stated that he does not know complainant – Mahender. Two DWs were examined in his defence.

5. After hearing learned counsel for the parties and having gone through the material available on record, accused – Amit Rama was held guilty under Section 138 of the Act and sentenced, as detailed above.

6. Appeal preferred by the accused also failed before the lower appellate court. In this backdrop of facts, the instant revision petition has been preferred by the accused.

7. At the time of issuing notice of motion in September 8, 2015, learned counsel for the petitioner submitted that he does not intend to press the petition on merits. He further submitted that

conviction of the petitioner be upheld and petition may be considered only for the limited purpose of reduction of sentence to the period already undergone by him. Consequently, while upholding the conviction of petitioner, notice of motion was issued to the limited extent of quantum of sentence, vide order dated September 8, 2015.

8. As far as quantum of sentence is concerned, learned counsel for the petitioner has submitted that the petitioner is a first offender. No other case of similar nature is either pending or disposed of against the petitioner. He is the only bread winner in the family. He never misused the concession of bail during trial. He has already undergone a period of more than 6 months, out of the substantive sentence of one year. Accordingly, learned counsel for the petitioner prays that sentence imposed upon the petitioner be reduced to the period already undergone.

9. This Court has given an anxious thought to the submissions made by learned counsel and have gone through the record available on file.

10. As per the custody certificate dated January 28, 2016, by now, the petitioner has already undergone more than 6 months out of total sentence of one year.

11. In similar circumstances, the Hon'ble Apex Court in case Harjit Singh v. State of Haryana, (2002) 10 SCC 695 had

reduced the sentence of 7 years under Section 25 of the Arms act as already undergone (more than 5 years). To the same effect is the judgment in case Kirpal Singh v. State of Punjab, 2009(1) AICLR 243, whereby this Court had reduced the sentence of petitioner to already undergone, taking into consideration the fact that petitioner has three children – there is no one to look after his family – petitioner has already undergone sentence of more than 5 months out of total sentence of one year. In cases Jagdeep Singh @ Neetu v. State of Punjab, 2013(2) Law Herald 1849; Surjit Singh v. State of Punjab, 2003(2) RCR (Criminal) 429, Sudhir v. State of Haryana, 2001(2) RCR (Criminal) 336; and Chhotu Ram v. State of Haryana, 2013(4) RCR (Criminal) 630, similar view has been adopted.

12. Taking into consideration the totality of facts and circumstances, though, conviction of the petitioner is upheld but the sentence imposed upon him under Section 138 of the Act is reduced to the period already undergone by him with no change in fine clause which is stated to be already deposited with the trial court. The petitioner is ordered to be released forthwith.

13. With the above modification in the sentence, the revision petition is dismissed.

Crl. Misc. No.23954 of 2015

In view of the aforesaid judgment rendered in the main case itself, application under Section 397 Cr.P.C. for suspension of sentence has rendered infructuous and is disposed of as such.

February 12, 2016
avin

(Jaspal Singh)
Judge