IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-4085-2015 (O & M)
Date of decision:09.05.2016

Angrez Singh

...Petitioner(s)

Versus

Oriental Bank of Commerce

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. O.P. Kamboj, Advocate,
for the petitioner(s).

Mr. R.P.S. Ahluwalia, Advocate,
for the respondent.

***

Rajan Gupta, J. (oral)

Present revision is directed against judgment of conviction of the accused-petitioner under section 138 of the Negotiable Instruments Act, 1885 (hereinafter referred to be as "the Act"). Petitioner has been sentenced to undergo rigorous imprisonment for one year by Sub Divisional Judicial Magistrate, Jalalabad (West) Petitioner preferred appeal before Additional Sessions Judge, Fazilka, which was dismissed vide judgment dated 20.08.2015.

Feeling aggrieved against the judgments of both the courts below, petitioner has approached this court through the instant Criminal Revision.

Learned counsel for the petitioner at the outset states that he is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. He states that he is conscious that scope in the revision is very limited as evidence of the witnesses cannot be re-appreciated or re-evaluated.

SUKHPREET KAUR
2016.05.11 17:20
I attest to the accuracy and
integrity of this document

Learned counsel for the respondents, on the other hand submit that in case conviction of petitioner is maintained, the court may reduce the sentence as deemed appropriate in the circumstances of the case.

I have heard learned counsel for both the sides.

Briefly, the prosecution case runs thus:

On 07.09.2004, the accused-petitioner obtained a housing loan of ₹1,50,000/- and now a sum of ₹1,90,000/- alongwith interest is outstanding against him. In discharge of his outstanding liability, he issued a cheque bearing No.698354 dated 01.06.2009 for a sum of ₹1,90,000/- drawn on Oriental Bank of Commerce, Branch Jalalabad, which on presentation was dishonoured on account of 'insufficient funds' in his account. Thereafter, the complainant-Bank issued a legal notice under registered cover to the accused, despite receiving the same, the accused-petitioner did not pay a single penny to the complainant Bank. Accordingly, a complaint was filed against the petitioner.

After recording pre-summoning evidence, the complainant-Bank examined Bharat Bhushan Garg-Branch Manager, the trial court found sufficient grounds for proceeding against the accused, the accused was summoned to face trial for commission of offence under Section 138 of the Act.

On appearance of the accused, notice of accusation under the Act was served upon the accused, to which he pleaded not guilty and claimed trial.

SUKHPREET KAUR
2016.05.11 17:20
I attest to the accuracy and
integrity of this document

To substantiate its case against the accused, the complainant-Bank examined only one witness and closed the evidence.

The statement of the accused under Section 313 Cr.P.C. was recorded, wherein all the incriminating evidence available on record was put to him. He refuted the incriminating circumstances and pleaded false implication. The accused, however, did not examine any witness in his defence.

On the basis of the evidence on record, learned trial court held the petitioner guilty of the charges under sections 138 of the Act and sentenced him as already indicated above. The appeal filed against the said judgment was also dismissed by the learned Additional Sessions Judge, Fazilka.

On perusal of the judgments of both the courts below, I am of the considered view that the trial court has rightly appreciated the evidence on record while holding the petitioner guilty of the charge framed against him. The appellate court has also rightly dismissed the appeal. There is no infirmity or illegality in the findings given by both the courts below. The conviction of the petitioner is, thus, affirmed.

Even counsel for the petitioner, during the course of arguments, has not assailed the judgment of conviction. He has, however, pleaded for reduction in the quantum of sentence on the ground that the petitioner is a poor person and first offender. He has stated that he is conscious that the scope in revision is very limited as evidence of the witnesses cannot be re-appreciated and re-evaluated.

SUKHPREET KAUR
2016.05.11 17:20
I attest to the accuracy and
integrity of this document

Learned State counsel has placed on record affidavit of Baldev Singh, Deputy Superintendent, Central jail, Ferozepur, according to which the petitioner had undergone actual custody of 10 months and 23 days.

Incident occurred 12 years ago in which the accused was found guilty of offence under Sections 138 of the Act. Stand of the counsel for the respondents is that in case this court intends to maintain the conviction of the petitioner and reduce the quantum of sentence to that already undergone, State would have no reason to stand in the way of such orders.

Thus, keeping in view the facts and circumstances of the case, it is directed that the sentence awarded to the petitioner shall be reduced to the period already undergone by him. However, fine imposed shall remain intact.

The amount of fine if not already paid shall be deposited within three months from the date of receipt of certified copy of this order. However, in case fine is not deposited within the stipulated period, the modification in quantum of sentence shall stand withdrawn and the petitioner shall undergo the remaining period of sentence as awarded by the trial court. Except with modification in the quantum of sentence, as indicated herein above, the revision petition is dismissed.

(RAJAN GUPTA)
JUDGE

09.05.2016
sukhpreet

SUKHPREET KAUR
2016.05.11 17:20
I attest to the accuracy and
integrity of this document