

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

CRR No.212 of 2016 (O&M)
Decided on: 27.09.2017

M/s Om International (Prop Concern) & another

.....Petitioner.

Versus

M/s Winner Nippon Electronic Ltd.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Mohinder Singh Joshi, Advocate
for the petitioners.

Mr. Sham Lal Bhalla, Advocate for
Mr. Santosh Kumar Sharma, Advocate
for the respondent-complainant.

Mr. A.S. Dhaliwal, DAG, Punjab.

HARI PAL VERMA, J. (Oral)

The petitioners have filed the present revision petition against the judgment dated 04.01.2016 passed by learned Additional Sessions Judge, SAS Nagar, Mohali, whereby the appeal filed by the petitioners against the judgment of conviction and order of sentence dated 25.08.2014 passed by learned Judicial Magistrate Ist Class, Dera Bassi was dismissed.

Briefly stated, complainant-respondent has filed a complaint against the petitioners for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, "the Act"). As per the

averments made in the complaint, petitioner no.1, which is a proprietorship concern, is stated to have approached the respondent-complainant through petitioner no.2 for supply of non-woven fabrics and accordingly, the respondent-complainant supplied the material to petitioner no.1. The material was duly received and consumed by petitioner no.1. Accordingly, petitioner no.1 issued six cheques drawn on Punjab National Bank, New Delhi, as part payment, in discharge of its legally enforceable liability towards supply of material. The complainant presented three cheques for encashment on its due date, but the same were returned back with the endorsement "Exceeds Arrangement". Intimation in this regard was sent by the bank to petitioners. The complainant sent notice to petitioners, which was received back with the remarks "refusal to accept". Thereafter, another notice was sent to the accused at his residential address, which was not received back. Hence, the present complaint.

Learned Judicial Magistrate Ist Class, Dera Bassi after hearing both the parties and appreciating the evidence on record, has convicted the petitioner-accused for offence under Section 138 of the Act and vide separate order of even date, sentenced him to undergo simple imprisonment for a period of one year and four months and to pay compensation of Rs.49,50,000/-.

Aggrieved against the aforesaid judgment of conviction and order of sentence, the petitioners preferred an appeal before the lower Appellate Court, which was dismissed by learned Additional Sessions Judge, SAS Nagar, Mohali vide judgment dated 04.01.2016.

Still aggrieved, the petitioners have filed the present revision petition, impugning the judgments passed by both the Courts below.

At the outset, learned counsel for the petitioners states that during the pendency of the present revision petition, the matter has been compromised between the parties and a compromise deed dated 24.02.2016 has been reduced into writing. He further states that the petitioner-accused is not seeking acquittal in the case, however, considering the fact that as against the awarded sentence of simple imprisonment of 1 year and 4 months, the petitioner no.2 is in custody for a period of about 8½ months, therefore, the substantive sentence of the petitioner no.2 be reduced to the period already undergone.

Learned State counsel has filed the custody certificate of petitioner no.2, which reflects that he is in custody for 8 months and 15 days.

On the other hand, learned counsel for the respondent-complainant states that he has no objection in case the substantive sentence of the petitioner no.2 is reduced to the period already undergone by him.

I have heard learned counsel for the parties.

Taking into consideration the argument raised by learned counsel for the petitioners to the effect that he is not seeking acquittal of petitioner no.2, rather, since petitioner no.2 has undergone more than half of his sentence and a compromise has also been entered between the parties, this Court feels that the ends of justice would be met, if the substantive sentence awarded to petitioner no.2 is reduced to the period already undergone by him.

Accordingly, the present revision petition is dismissed, however, the substantive sentence of petitioner no.2 - Dhananjay Partap is reduced to the period already undergone by him.

September 27, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No