

278.

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

CRR-3374-2014 (O&M)

Date of decision: 14.12.2017.

SURINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Vaibhav Narang, Advocate,
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. K.S. Rekhi, Advocate,
for respondent No.2.

HARI PAL VERMA, J. *(Oral)*

The petitioner has filed the present revision petition against judgment dated 17.09.2014 passed by learned Additional Sessions Judge, Amritsar whereby his appeal against the judgment of conviction and order of sentence dated 16.08.2012 passed by learned Judicial Magistrate 1st Class, Amritsar, was dismissed.

Briefly stated, the respondent-complainant M/s Apni Hatti through its proprietor Smt. Sita Rani had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (*for short, 'the Act'*) on the ground that the accused had issued three post-dated cheques to the complainant bearing No.880030 dated 01.09.2008 for a sum of Rs.40,000/-, Cheque No.880022 dated 01.11.2008 for a sum of Rs.10,000/- and Cheque

No.880023 dated 01.12.2008 for a sum of Rs.10,000/-. However, when these cheques were presented for clearance, these were dishonoured with the remarks "*fund insufficient*". The dishonouring of cheques led to filing of the complaint under section 138 of the Act.

The learned trial Court vide judgment dated 16.08.2012 convicted the petitioner under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.5,000/- and in default of payment of fine to further undergo simple imprisonment for two months. The petitioner preferred an appeal against the judgment of conviction dated 16.08.2012, however, vide judgment dated 17.09.2014 passed by learned Additional Sessions Judge, Amritsar, same was also dismissed.

It is in the aforesaid circumstances, present revision petition has been filed assailing the verdict of the courts below.

At the outset, learned counsel for the petitioner states that during the pendency of the present revision petition, the matter has been compromised between the parties and the petitioner has paid double of the cheque amount i.e. Rs.1,20,000/- to the complainant in the presence of his counsel. He further submits that the petitioner is a poor person and it is because of the efforts made by his relatives and friends, the said amount has been arranged. He further states that the petitioner-accused is not seeking acquittal in the case, however, considering the fact that he remained in custody for 3 months and 13 days (including remissions of 8 days), the substantive sentence of the petitioner may be reduced to the period already undergone.

Learned counsel for respondent No.2-complainant also accepts

the factum of compromise entered into between the parties. He submits that he has no objection in case the sentence awarded to the petitioner is reduced to the period already undergone by him.

I have heard learned counsel for the parties.

Though vide order dated 19.05.2015, this court has referred the matter to the Mediation and Conciliation Centre at Amritsar, so as to settle the dispute, and as per settlement so arrived at between the parties before the Mediation and Conciliation Centre, Amritsar on 10.07.2015, the petitioner was required to pay the agreed amount of Rs.1,20,000/- to the respondent/complainant by 14.12.2015, but agreed amount was never paid to the respondent complainant. Thus for non-compliance of his own undertaking and for non-appearance of his counsel on 12.01.2016, the present revision petition was dismissed for non-prosecution. However, vide order dated 13.12.2017, passed in Criminal Misc. No.37846 of 2017, the present revision petition was restored to its original number.

In view of these facts and circumstances, while taking into consideration the fact that the proceedings under Section 138 of the Act, though are criminal in nature but has a civil liability as well, and keeping in view the limited prayer of learned counsel for the petitioner, this Court deems it appropriate to reduce the sentence awarded to the petitioner to the period already undergone by him.

Accordingly, the impugned judgment of conviction dated 16.08.2012 passed by learned Magistrate and affirmed by the lower appellate Court is upheld. However, the impugned order of sentence is modified to the extent that the sentence awarded to the petitioner is reduced to the period already undergone by him.

The petitioner be released forthwith, if he is custody in the present case and not required in any other case.

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

(HARI PAL VERMA)
JUDGE

14.12.2017
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No