

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

CRR No.4823 of 2015 (O&M)

Date of Decision: September 28, 2017

Lakhvir Chand

...Petitioner

VERSUS

Prem Sagar Duggal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mandeep Singh, Legal Aid counsel,
for the petitioner.

None for respondent No1.

Mr.Ajay Pal Singh Gill, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Lakhvir Chand against respondents Prem Sagar Duggar and State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 17.08.2013 passed by learned Judicial Magistrate Ist Class, Phillaur, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 138 of the Negotiable Instruments Act and also challenging the judgment dated 17.07.2015 passed by learned Addl. Sessions Judge, Jalandhar, vide which appeal filed by petitioner was

dismissed.

At the time of preliminary hearing, learned counsel for the petitioner did not dispute the concurrent findings of the Courts below regarding conviction and only contended on the point of reduction of sentence.

Notice of motion was issued only qua quantum of sentence. Learned State counsel appeared and contested the petition. However, none appeared on behalf of respondent No.1.

From the record, I find that a complaint was filed by the complainant Prem Sagar Duggal against accused Lakhvir Chand under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Phillaur, are as under:-

“2. In brief, it is the case of the complainant that accused has borrowed an amount of Rs.3,50,000/- in cash at Phillaur for domestic purpose in good faith from the complainant before six months, from the date of filing this complaint. Accused promised to return the amount in question on the demand of complainant with interest of 2% per month.

3. It is further case of the complainant that complainant demanded the amount in question from the accused in the month of March 2011 and accused issued one post dated cheque to complainant of dated 05.05.2011 bearing no.742202 for amount of Rs.3,50,000/- of UCO Bank, Branch Phillaur account No.8718. Accused promised to complainant that he will keep sufficient fund in his account at the time of issuance of the cheque in question.

4. It is further case of the complainant that complainant put the cheque into his bank which is Union Bank of India, branch Phillaur in his account on dated 06.05.2011 and after that UCO bank issued a memo dated 06.05.2011 in which mentioned reason “Funds Insufficient”, hence the cheque in question was not cashed and the cheque in question was dishonoured, as such accused has committed an offence under Section 138 of Negotiable Instruments Act.

5. It is further case of the complainant that the complainant issued a registered legal notice dated 12.05.2011 to the accused through his counsel and in spite of service of the legal notice, accused did not pay anything out of the amount in the cheque in question up till today. The accused did not contact the complainant personally or through telephone, hence the accused is liable to pay the amount in question and the present complaint has been filed.””

Learned JMIC, Phillaur, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Jalandhar, vide judgment dated 17.07.2015.

Aggrieved from the above-said judgments, present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner did not dispute the concurrent findings of the Courts below regarding conviction and only contended on the point of reduction of sentence. Learned counsel for the petitioner argued that petitioner is a poor person and sole bread earner of the family. Learned counsel for the petitioner further contended that the petitioner is suffering from the criminal proceedings since 2011 and he has already undergone actual sentence of 1 year 4 months and 9 days including remission.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that petitioner is stated to be poor person, sole bread earner of the family and he is facing long protracted criminal proceedings since 2011 i.e. for the last about 6 years and also in view of the fact that petitioner has already undergone actual sentence of 1 year 4 months and 9

days including remission of 2 months and 11 days out of the total sentence, the sentence imposed upon the petitioner is reduced to the sentence already undergone by him. The petitioner is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, the present revision petition stands partly allowed.

Since, petitioner Lakhvir Chand is on bail, his bail/surety bonds stand discharged.

September 28, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No