

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

**CRR No.4845 of 2015 (O&M)
Date of Decision: October 09, 2017**

Harnek Singh

...Petitioner

VERSUS

Ravinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amandeep Kansal, Advocate for
Mr.L.S.Sidhu, Advocate
for the petitioner.

None for the respondent.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Harnek Singh against respondent Ravinder Singh, challenging the impugned judgment of conviction and order of sentence dated 24.12.2013 passed by learned Sub Divisional Judicial Magistrate, Sunam, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 138 of the Negotiable Instruments Act and also challenging the judgment dated 07.09.2015 passed by learned Addl. Sessions Judge, Sangrur, vide which appeal filed by petitioner was

dismissed.

From the record, I find that a complaint was filed against accused-petitioner under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned SDJM, Sunam, are as under:-

“In brief the facts as emanate from the complaint are that the accused raised a friendly loan of Rs.2,50,000/- from the complainant at Sunam in the first week of February 2012; that the accused was already known to the complainant and was on friendly terms with him; that at the time of receiving the said amount, the accused assured him to return the said amount after the lapse of about one month; that in order to discharge his liability towards the complainant, the accused issued a cheque in the name of the complainant for the amount of Rs.2,50,000/-, bearing No.555848 dated 15.03.2012, drawn on Oriental Bank of Commerce, branch Sunam; that at the time of the issuance of the said cheque, accused assured the complainant that there was sufficient amount in his account to honour the said cheque, but when the complainant presented the said cheque in Oriental Bank of Commerce, Branch Sunam on 15.03.2012, the same was returned by the banker with objection memo dated 15.03.2012 bearing remarks 'funds insufficient' and thereby, the said cheque issued by the accused in favour of the complainant was dishonoured; that in fact, at the time of the issuing of the said cheque, the accused was well within the knowledge that he had not the sufficient amount in his account to honour the said cheque; that the complainant issued a legal notice dated 24.03.2012, through counsel, calling upon the accused to make the payment of the cheque amount within the period of 15 days, but the accused neither paid the amount nor bothered to make any reply to the said notice and hence this complaint. ”

Learned SDJM, Sunam, 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, Sangrur, vide judgment dated 07.09.2015.

Aggrieved from the above-said judgments, present revision

petition has been filed by the petitioner.

Notice of motion was issued. Earlier, learned counsel for the respondent was appearing but today none appeared on behalf of the respondent.

At the time of arguments, learned counsel for the petitioner did not dispute the concurrent findings given by learned Courts below, regarding conviction and only contended on the point of reduction of sentence. Learned counsel for the petitioner argued that petitioner is poor person, only bread earner of the family and suffering from the criminal proceedings since 2012 and is undergoing sentence since 02.11.2015.

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

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 24.12.2013 passed by learned SDJM, Sunam, is correct, as per law and does not require any interference from this Court.

However, 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 suffering from long protracted criminal proceedings since 2012 i.e. for the last about 5 years and further in view of the fact that petitioner is undergoing sentence since 02.11.2015, the sentence imposed upon the petitioner is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof, shall remain the same.

Therefore, the present revision petition stands partly allowed.

Petitioner Harnek Singh, who is in custody, be set at liberty

forthwith, if his custody is not required in connection with any other case,
subject to payment of fine, if already not paid.

October 09, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No