IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226 **CRR-4852-2016 (O&M)**

Date of Decision:03.12.2018

Sodagar **.....Petitioner**

Versus

The District Primary Coop. Agriculture & Rural Development Bank Limited through its Branch Manager and another **.....Respondents**

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

Present: Mr. R.K. Handa, Advocate and Mr. Dharam Bir Bhargav, Advocate, for the petitioner.

None for respondent No.1.

Mr. Ripu Daman, A.A.G., Haryana.

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HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition against the judgment dated 09.12.2016 passed by learned Sessions Judge, Kurukshetra, whereby his appeal against the judgment of conviction and order of sentence dated 01.06.2015 passed by learned Judicial Magistrate 1st Class, Kurukshetra, was dismissed.

Briefly stated that respondent No.1-complainant filed a complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (for brevity "the N.I. Act") with an averment that the petitioner-accused had availed a loan of ₹6,00,000/- for a period of ten years from the Kurukshetra Central Co-op. Bank, Dhurala and had executed a mortgage deed. In order to discharge the outstanding loan, the petitioner had issued a cheque bearing No.0547402 dated 15.09.2011 for an amount of ₹1,09,900/- in favour of the complainant-Bank. However, when the cheque was presented for encashment, it was returned by the banker of the accused with the remarks "Funds Insufficient" vide memo dated 07.11.2011. Thereafter, the complainant issued a legal notice dated 12.11.2011. But despite having been served a legal notice, the petitioner-accused did not make the payment of the cheque amount. Resultantly, respondent No.1-complainant filed a complaint under Sections 138/142 of the N.I. Act.

The petitioner was summoned for offence punishable under Sections 138/142 of the N.I. Act and notice of accusation was served upon him vide order dated 22.11.2012. The petitioner did not plead guilty and claimed trial.

The trial Court vide judgment dated 01.06.2015 held the petitioner guilty for offence punishable under Section 138 of the Act and vide separate order of even date sentenced him to undergo rigorous imprisonment for a period of one year and to pay compensation to the tune of ₹2,19,800/- i.e. twice the cheque amount.

Aggrieved against the judgment of conviction and order of sentence passed by the learned Magistrate, the accused-petitioner filed an appeal, but the Appellate Court did not interfere in the judgment passed by the trial Court convicting the petitioner and dismissed the appeal.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

On 23.12.2016, when this revision petition was listed for hearing, counsel for the petitioner has sought time so as to confirm as to whether the petitioner was ready to discharge his liability without prejudice to his legal rights.

For the availed loan of ₹6 lac, petitioner had issued a cheque of ₹1,09,000/- as part-payment. The trial in the case was conducted for the cheque bounced. He states that as directed by this Court on 23.12.2016, petitioner has deposited the cheque amount. The petitioner had availed the loan after mortgaging his land which is still lying mortgaged with the Bank.

Learned counsel for the petitioner has confined his arguments qua the cheque amount with an undertaking that the complainant-Bank is otherwise entitled to recover the outstanding amount along with interest while calculating the same. The compensation awarded by the trial court i.e. twice the amount of the cheque, in terms of Section 357(3) Cr.P.C., cannot be insisted upon, for the reason that the land of the petitioner is already mortgaged with the Bank and there is a charge over the property.

Nobody is present on behalf of the complainant-respondent Bank, despite having been served. On 02.02.2017, Sh. Aakash Juneja, Advocate, had appeared on behalf of respondent No.1, but thereafter the case is being adjourned repeatedly and no one has appeared on behalf of complainant-respondent No.1.

I have heard learned counsel for the petitioner as well as learned State Counsel.

Learned counsel for the petitioner has produced the photocopies of bank draft dated 10.05.2017 and 26.10.2017 to substantiate his plea that the petitioner has paid an amount of ₹55,000/- on 10.05.2017, whereas the remaining cheque amount of ₹55,000/- was deposited on 26.10.2017, which are taken on record.

Considering the fact that the cheque amount is for ₹1,09,000/- and the photocopies of the bank drafts so produced by learned counsel for the petitioner does substantiate the fact that an amount of ₹1,10,000/- has been paid by way of two bank drafts, this Court finds that the complainant has been paid an amount of ₹1,10,000/- i.e. the cheque amount. Moreover, as against the awarded sentence of one year, petitioner is stated to be in custody for about one month and twenty six days and the learned State Counsel while producing the custody certificate has confirmed this fact.

Although, the scope of interference by this Court in revisional jurisdiction is very limited, however, taking into consideration the fact that the petitioner has paid the cheque amount, which has not been controverted by the complainant-respondent, coupled with the fact that he remained in custody for one month and twenty six days and is facing the agony of trial since date of institution of the complaint i.e. 07.12.2011 when the complaint was filed, I am of the opinion that ends of justice would be met if the sentence of the petitioner is reduced to the period already undergone by him.

Accordingly, the impugned judgment of conviction and order of sentence dated 01.06.2015 passed by learned Magistrate and affirmed by the lower appellate Court vide judgment dated 09.12.2016, are 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.

It is made clear that the present petition is disposed of only qua the factum of the cheque amount in dispute and that too because the property of the petitioner is already lying mortgaged with the bank. In case, it is found that this fact is incorrect, the bank would be at liberty to seek revival of this petition.

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

December 03, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No