

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

CRR No.807 of 2016.

Decided on:- November 27, 2018.

Sudarshan Sharma.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

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

Present:- Mr. Harish Kumar Verma, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, Dy. Advocate General, Punjab
for respondent No.1-State.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 20.01.2016 passed by learned Additional Sessions Judge, Pathankot, whereby his appeal against the judgment of conviction and order of sentence dated 19.11.2014 passed by learned Chief Judicial Magistrate, Pathankot, was dismissed.

Briefly stated, respondent No.2-complainant M/s S.F. Finance Company Private Limited, Pathankot through its director Ravinder Singh (hereinafter mentioned as the complainant) had filed a complaint against petitioner-accused Sudarshan Sharma under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) read with Section 420 IPC with the averments that the complainant is a body incorporated under the Companies Act, 1956 carrying on the business of Non-Banking Finance Company and having its corporate office at Pathankot.

The petitioner-accused in order to discharge his legally enforceable liability towards the complainant issued a cheque bearing No.0061113 dated 20.12.2006 amounting to Rs.10 lakh drawn on Union Bank of India, Pathankot. However, on presentation, the said cheque was dishonoured by the banker of the accused i.e. Union Bank of India, Pathankot vide memo dated 29.12.2006 with remarks "Account Closed". The complainant served a legal notice to the accused, but since the payment was not made, the complainant filed the aforementioned complaint under Section 138 of the Act read with Section 420 IPC against the accused.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 19.11.2014 convicted the petitioner for the commission of offence punishable under Section 138 of the Act and vide separate order of the said date, sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2,000/-. In default of payment of fine, the convict was further ordered to undergo rigorous imprisonment for one month.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 20.01.2016 passed by learned Additional Sessions Judge, Pathankot, appeal of the petitioner was dismissed.

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

At the outset, learned counsel for the petitioner has not challenged the present revision on merits and confined the submissions only for a lenient view regarding quantum of sentence. He has submitted that as

against the awarded sentence of one year, the petitioner has remained in custody for a period of 2 months and 27 days. He is a first time offender and no other case is pending against him. Thus, he has prayed that the sentence of imprisonment awarded to the petitioner may be reduced to the period already undergone by him.

He has further contended that even otherwise, the matter has already been compromised between the parties. The petitioner and the complainant were in jail at the relevant time when the compromise was effected between them. He has referred to the copy of compromise deed dated 20.02.2016 (Annexure P-1) duly signed by the petitioner as well as the complainant. The said compromise deed was duly attested by the Deputy Superintendent, Sub-Jail, Pathankot. He has also referred to the affidavit dated 20.02.2016 executed by the complainant in support of the compromise, which was duly notarised as the Notary was summoned in the jail premises so that the affidavit could be executed.

He has further contended that as per the compromise effected between the parties, the complainant has received the full and final settlement amount from the petitioner and nothing is due from the petitioner. Now, the complainant has become dishonest and he is not intending to honour the said compromise despite having accepted the cheque amount of Rs.10 lakh.

On the other hand, learned State counsel has not disputed the custody of the petitioner, but has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioner. However, he states that there is no other case against the petitioner.

No one is present on behalf of respondent No.2-complainant despite service, as is apparent from the earlier order dated 12.03.2018 passed by this Court.

I have heard learned counsel for the parties.

Perusal of the impugned judgments passed by the Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Section 138 of the Act. The appellate Court has also dismissed his appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, a bare glance of the compromise deed (Annexure P-1) does reflect that on the relevant date i.e. 20.02.2016, the petitioner and the complainant were confined in Sub-Jail, Pathankot. Further, there is a specific averment in the compromise deed that the complainant has received the full and final settlement amount from the accused and nothing is due from the accused and both the parties shall abide by the terms and conditions of the compromise and remain bound by the same. The relevant paragraphs No.3 to 7 of the compromise deed dated 20.02.2016 (Annexure P-1) read as under:

“3. That now both Sudarshan Sharma as well as the Director of the M/s S.F. Finance Company Limited namely

Ravinder Singh are confined to jail at Sub-Jail, Pathankot and the sense of good will has been developed between them and they do not want to fight any more on this issue and rather they have settled their dispute in this regard.

4. *That now it has been agreed upon between the complainant and the accused person that the complainant does not want to press the criminal complaint against the accused and the complainant will have no objection if the sentence of the accused person is being suspended, the judgment of conviction dated 19.11.2014 passed by the court of Sh. Jarnail Singh, PCS, Chief Judicial Magistrate, Pathankot in criminal case no.24 of 2007 whereby the accused / convict Sudarshan Sharma, had been ordered to be convicted under section 138 of the Negotiable Instruments Act, as well as the judgment in appeal dated 20.01.2016, whereby the findings recorded by the ld. Trial court were affirmed and upheld by the court of Smt. Lukhvinder Kaur Duggal, Additional Sessions Judge, Pathankot, are being set aside and quashed and the criminal revision, which will be filed by the accused/convict against the dismissal of appeal dated and 20.01.2016 by the Hon'ble High Court of Punjab and Haryana at Chandigarh is being allowed being compromised.*
5. *That the complainant has received the full and final settlement amount from the accused Sudarshan Sharma and nothing is due from the accused.*
6. *That both the parties shall abide by the terms and conditions of the compromise and remain bound by the same.*

7. *That the complainant shall be bound to make the statement before the Hon'ble High Court of Punjab and Haryana either himself or through the legal practitioner on the basis of this compromise deed."*

Further, at the time when notice of motion was issued by this Court vide order dated February 29, 2016, learned counsel for the petitioner has contended that during pendency of the present criminal revision, better sense had prevailed and both the private parties to the *lis* have resolved their dispute and effected a compromise.

On the basis of aforesaid assertion, this Court vide order dated April 11, 2016 had directed the parties to be present before the Jurisdictional Magistrate on 03.05.2016 or any other date convenient to the Court for recording their statements with regard to compromise. Since the compromise was stated to have been arrived at between the parties, the application for suspension of sentence was allowed and the sentence imposed upon the petitioner was ordered to be suspended during pendency of present criminal revision subject to furnishing requisite bail bonds to the satisfaction of concerned CJM/Duty Magistrate.

Pursuant to the aforesaid order dated 11.04.2016 passed by this Court, the petitioner and complainant appeared before learned Chief Judicial Magistrate, Pathankot and got their statements recorded. However, the complainant did not accept the compromise in his statement. The statement so made by the complainant before learned Magistrate on 16.05.2016 reads as under:

"I am the complainant in this case. I have not compromised the matter with the accused namely Sudarshan

Kumar Sharma s/o Achar Mal Sharma, r/o Dhakki, Tehsil and District Pathankot in the complaint. However accused did not pay me settle amount of Rs.50,000/- as well as counsel fee as he agreed to pay to me so unless and until entire amount paid to me, I do not accept the compromise being unexecuted.”

On the basis of statement of the complainant, learned Magistrate had intimated this Court that since the complainant has suffered a statement that he has not compromised the matter as the accused has not paid Rs.50,000/- as well as counsel fee, the complainant has not accepted the compromise being unexecuted.

A bare perusal of the compromise deed (Annexure P-1) and the statement dated 16.05.2016 made by the complainant before learned Magistrate does reflect that the matter was virtually compromised between the parties and resultantly, the complainant had received the full and final settlement amount from the petitioner. However, while not accepting the compromise before learned Magistrate, what might have weighed to the mind of the complainant to claim additional amount of Rs.50,000/- as well as counsel fee on the plea that it was settled to be paid by the petitioner, but there is no such recital in the compromise deed (Annexure P-1) which has duly been supplemented with the affidavit (Annexure P-2) executed by the complainant.

At this stage, when the matter has been compromised between the parties in the jail premises, but by not accepting the same before learned Magistrate, the complainant has probably shown his greed by further demanding Rs.50,000/- and counsel fee in addition to what had been settled and paid by the petitioner. Thus, the demand of additional amount of

Rs.50,000/- and counsel fee was never the term and condition of the compromise.

Therefore, having regard to the compromise deed (Annexure P-1) entered between the petitioner and the complainant, which is duly supplemented with the affidavit (Annexure P-2) executed by the complainant and having perused the statement made by the complainant before learned Magistrate, this Court finds that when the petitioner has paid the settled amount in terms of the compromise so entered, but the complainant by not accepting the compromise has shown his greed to extract additional amount, which was never a part of compromise. The complainant is trying to exploit the situation. It rather reflects dishonesty on the part of complainant.

In view of the above and while taking into consideration the fact that the proceedings under Section 138 of the Act, this Court deems it appropriate to reduce the sentence awarded to the petitioner to the period already undergone by him.

Ordered accordingly.

However, there will be no change in the sentence of fine imposed upon the petitioner.

With aforesaid modification in the order of sentence, the instant revision petitions stand dismissed.

November 27, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned:

Yes

Whether Reportable:

No