251.

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

I. **CRR-1044-2018**
Date of decision:07.12.2018.

JANARDHAN PARSAD ... Petitioner

Versus

THE HINDU COOP BANK LTD AND ANR. .... Respondents

II. **CRR-1045-2018**

KAMLESH RANI ... Petitioner

Versus

THE HINDU COOP BANK LTD AND ANR. .... Respondents

III. **CRR-1039-2018**

JANARDHAN PARSAD ... Petitioner

Versus

THE HINDU COOP BANK LTD AND ANR. .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Hemant Bassi, Advocate,
for the petitioner (s).

Mr. Pankaj Gupta, Advocate,
for respondent No.1.

Mr.Rana Harjasdeep Singh, DAG, Punjab,
for respondent No.2.

HARI PAL VERMA, J.*(Oral)*

This order shall dispose of three petitions i.e. ***CRR Nos.1044 and 1039 of 2018*** titled as "***Janardhan Parsad Versus The Hindu Coop. Bank Ltd., and another***" and ***CRR No.1045 of 2018*** titled as "***Kamlesh Rani Versus The Hindu Coop. Bank Ltd., and another***".

These petitions have been filed against the judgment dated 19.02.2018 passed by learned Additional Sessions Judge, Pathankot, whereby the appeal filed by the petitioners against the judgment of conviction and order of sentence dated 18.09.2017 passed by learned Additional Chief Judicial Magistrate, Pathankot, was dismissed.

Briefly stated, the respondent-complainant had filed complaints under Section 138 of Negotiable Instruments Act and under Section 420 IPC with the averments that the petitioners-Janardhan Parsad and Kamlesh Rani availed loans (i.e. Rs.50 lakhs for a period from 15.12.2011 to 23.02.2012 while holding loan account No.MTS-1, which is the subject matter of challenge in CRR No.1039 of 2018; Rs.75 lakhs on 15.12.2011 by holding loan account No.CCD-2, which is the subject matter of CRR No.1039 of 2018 and Rs.75 lakhs on 15.12.2011 by holding loan account No.CCB-1, which is the subject matter in CRR No.1045 of 2018) from the complainant and executed valid documents. However, the petitioner(s) did not pay the installments as per the terms and conditions of the loan agreement. In discharge of their liability, the petitioner-Janardhan Parsad issued a cheque bearing No.602504 of Rs.32 lakhs dated 09.10.2015 (in CRR No.1044 of 2018) and Cheque No.602503 dated 09.10.2015 for a sum of Rs.23 lakhs (in CRR No.1049 of 2018) in favour of the complainant Bank. Similarly, Kamlesh Rani (in CRR No.1045 of 2018) issued a cheque No.101315 dated

09.10.2015 for a sum of Rs.23,50,000/-. However, when the said cheques were presented for encashment, these were dishonoured with the remarks "Insufficient funds" vide memo dated 12.10.2015. Accordingly, the complainant issued legal notices dated 20.10.2015 & 21.10.2015, but as the petitioner(s) failed to make the payment, the complainant filed complaints under Section 138 of the Negotiable Instruments Act (for short, 'the Act') and Section 420 IPC.

After recording the evidence and hearing the parties, learned Chief Judicial Magistrate, Pathankot, vide his judgment dated 18.09.2017, held the petitioners-accused guilty for offence under Section 138 of the Act and vide separate order of even date, sentenced them to undergo rigorous imprisonment for two years and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months.

Feeling aggrieved, the petitioner(s) preferred appeal against the judgment of conviction and order of sentence passed by learned Magistrate before the Court of Session. However, vide order dated 19.02.2018, learned Additional Sessions Judge, Pathankot dismissed the appeal and maintained the conviction. Petitioners were ordered to be taken into custody and sent to jail to undergo the sentence.

It is in the aforesaid circumstances, the petitioners have filed the present revision petitions challenging the judgments of the Courts below.

When these revision petitions were taken up for hearing, the petitioners i.e. Janardhan Parsad in CRR Nos.1039 & 1044 of 2018 and Kamlesh Rani in CRR No.1045 of 2018 had shown their willingness to settle the matter with the complainant and to pay 50% of the cheque amount.

Accordingly, the petitioner(s) were released on interim bail and the matter was referred to Mediation and Conciliation Centre of this Court vide order dated 27.03.2018. However, the mediation could not be materialized between the parties.

However, as the complainant-Bank offered to settle the matter under One Time Settlement (OTS) scheme, the petitioner along with other family members resultantly arrived at a settlement with the complainant-Bank for an amount of approximately Rs.4.87 crores, being payable by the petitioner (s) on or before 31.03.2019 by way of instalments as agreed.

It has been reported that as a consequence of the OTS scheme and the settlement so arrived at, the petitioners have deposited about Rs.3.45 crores and now the remaining amount is required to be paid on or before 31.03.2019, in terms of instalments, so agreed between the parties.

At this stage, learned counsel for the petitioner(s) states that since under the OTS scheme, petitioner(s) have paid more than four times the cheque amount, coupled with the fact that the petitioner(s) are old persons and as against the awarded sentence of 2 years, they remained in custody for about 1 ½ months, the judgment of conviction may be set aside and they may be acquitted.

Learned State counsel has filed the custody certificates of petitioner(s) in court today, which are taken on record. He states that as against the awarded sentence of 2 years, the petitioner(s) remained in custody for about 1 month and 11 days.

I have heard learned counsel for the parties.

Considering the fact that as against the awarded sentence of 2 years, the petitioners remained in custody for about 1 ½ month and as against the cheque amount of Rs.78.50 lakhs (i.e. in CRR No.1044 of 2018 Rs.32 lakhs, CRR No.1039 of 2018 Rs.23 lakhs and in CRR No.1040 of 2018 Rs.23.50 lakhs), the petitioners have already paid an amount of Rs.3.45 crores (out of the settled amount of Rs.4.87 crores), which is four times more than the cheque amount, therefore, this Court finds that the orders of conviction of the petitioner(s) deserve to be set aside. Moreover the complainant-Bank has no strong objection in case the conviction of the petitioners is set aside.

In view of the aforesaid settlement between the parties, in case the conviction is not set aside, it would be too harsh a punishment for the petitioners.

Accordingly, present petitions are allowed and the order of the trial Court convicting the petitioner(s) and the lower Appellate Court affirming the same, are hereby set aside.

(HARI PAL VERMA)
JUDGE

07.12.2018
sanjeev

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