

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1127-2018 (O&M)

Date of Decision:15.11.2018

Paramjit Walia

.....Petitioner

Versus

State of Punjab and another

.....Respondent

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

Present: Mr. N.S. Mahal, Advocate,
for the petitioner.

Mr. Surinder Pal Singh Tinna, Addl. A.G., Punjab.

Mr. Anil K. Ahuja, Advocate,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition against the judgment dated 01.03.2018 passed by learned Additional Sessions Judge, Jalandhar, whereby his appeal against the judgment dated 02.01.2016 passed by learned Judicial Magistrate 1st Class, Jalandhar in Criminal Complaint No.NACT 35213/2013, was dismissed.

Briefly stated, respondent No.2-Bank has filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act (for brevity “the N.I. Act”).

As per allegations in the complaint, the accused-petitioner had approached the complainant-bank and requested for loan so as to pay the earnest money for the purchase of a residential flat at Shri Guru Arjan Dev

Nagar, Kartarpur for an amount of ₹4,10,000/-. Accordingly, the complainant-bank sanctioned loan of ₹4,10,000/- as per scheme, with the condition that the loan amount will be adjusted from the refunded amount to be received from the Improvement Trust in case of non-allotment of flat. However, in case of allotment, the petitioner-accused shall repay the loan from his own sources at the agreed rate of interest i.e. 10.40% P.A., subject to change of interest from time to time obviously as per the guidelines of Reserve Bank of India. The accused issued cheque No.157662 dated 27.09.2013 in favour of the complainant-bank for repayment of loan amount along with interest. He assured the complainant-bank that the abovesaid cheque be presented for encashment so as to recover the loan amount. On the assurance of the petitioner-accused, when the complainant-bank presented cheque No.157662 dated 27.09.2013 in his bank for encashment, the same was dishonoured with the remarks "Funds Insufficient". The complainant sent a legal notice dated 01.10.2013 to the accused through registered post. Despite that, the accused did not make the payment of loan amount, compelling respondent No.2-complainant to file the complaint under Section 138 of the Act.

The petitioner was summoned for offence punishable under Section 138 of the Act and notice of accusation was served upon him. The petitioner did not plead guilty and claimed trial.

The trial Court vide judgment dated 02.01.2016 held the petitioner guilty for the offence punishable under Section 138 of the N.I. Act and vide separate order of even date sentenced him to undergo rigorous imprisonment for a period of 02 years. He was also directed to pay compensation under Section 357 Cr.P.C. to the tune of double the cheque

amount so as to compensate the complainant for harassment suffered on account of dishonour of the cheque in question.

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

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

Learned counsel for the petitioner has argued that during the pendency of the present revision petition, matter has been settled with the respondent-bank under the special OTS scheme and as a consequence thereof, petitioner has paid an amount of ₹2 lac to the respondent-bank. As against the awarded sentence of two years, petitioner is in custody for about 05 months as he was released on bail on 19.07.2018. He confined his arguments on the point of quantum of sentence and further prayed that the sentence awarded to the petitioner may be reduced to the period already undergone.

Learned State Counsel has filed the custody certificate of the petitioner in court today, which is taken on record.

Learned counsel for respondent-complainant bank fairly states that since the petitioner has deposited the amount as per special OTS scheme and as on date, nothing is outstanding against the petitioner, they have no objection in case sentence awarded to the petitioner is reduced to the period already undergone by him.

I have heard learned counsel for the parties.

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 amount of ₹2 lac under the special OTS scheme and as against the awarded sentence of 02 years, he remained in custody for about 05 months and there being no any other case, 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.

Considering the custody of the petitioner as well as the fact that the petitioner is a first time offender and has paid amount under special OTS scheme, the sentence awarded to the petitioner is reduced to the period already undergone by him.

Accordingly, the impugned judgment of conviction and order of sentence dated 01.02.2016 passed by learned Magistrate and affirmed by the lower Appellate Court with modification, are upheld. However, the impugned order of sentence is modified to the aforesaid extent i.e. reduction of sentence for the period already undergone by the petitioner.

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

November 15, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No