

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

**CRR-4300-2017 (O&M)
Decided on : 05.06.2018**

Sumit Kumar

... Petitioner

Versus

Rajinder Kumar Nagpal and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Amaninder Preet, Advocate for the petitioner.

None for respondent No.1.

Mr. IPS Doabia, Addl. AG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the judgments of the Courts below, whereby the petitioner was sentenced to undergo one year imprisonment alongwith fine of ₹2,000/- under Section 138 of Negotiable Instrument Act, 1881.

The cheque in question was for a sum of ₹2,90,000/-, in favour of the complainant dated 24.07.2015. The same was returned on account of 'Funds Insufficient'. Resultantly, the complainant served a Registered A.D. notice dated 28.07.2015 upon the accused/petitioner. The complaint came to be filed, thereafter, leading to conviction on 29.03.2017 and accordingly the appeal was dismissed on 05.09.2017 by the Additonal Sessions Judge, Fazilka.

It is pertinent to notice that the legal notice as such was never rebutted to set out a defence that there was no pre-existing liabilities, which is now sought to be argued by counsel for the petitioner. The defence

throughout has been that the dealing was with Sushant who is the son of the complainant and, therefore, the cheque had been issued. The trial Court has also noticed that no defence evidence had been produced and resultantly on account of the cheque bouncing the sentence has been ordered.

Both the Courts below have recorded that the petitioner has not denied his signatures on the cheque in question and, therefore, on account of presumption under Section 139 as such in favour of the complainant, the conviction has been recorded. The Appellate Court has further noticed that no application as such has been filed to any police official or any other official for taking action against the complainant to get back the blank signed cheque and neither any application was moved by the accused for stopping the payment. No defence witness as such have been examined to substantiate the claim that the cheque had been handed over as a security, on account of the business dealings with the son of the complainant.

In such circumstances, this Court is of the opinion that the the orders passed by the Courts below do not suffer from any infirmity or illegality which would warrant interference by this Court in revisional jurisdiction.

The petitioner is in custody only from 11.11.2017, even though the judgment was pronounced on 05.09.2017 by the Additional Sessions Judge. Accused was not even present when the appeal was heard and, therefore, was taken into custody at a belated stage. However,

the latest custody certificate produced today shows that he has undergone 6 months 24 days of actual sentence as on 04.06.2018. The sentence is, accordingly, modified to 8 months, keeping in view the amount of the cheque as such.

Resultantly, the present revision petition is partly allowed of with the above said observations by giving relief on the point of the quantum of sentence.

JUNE 05, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No