

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

124+228

CRR-1710-2018 (O&M)

Date of Decision:26.09.2018

Ajit Singh

.....Petitioner

Versus

The Mansa Central Co-operative Bank Limited

.....Respondent

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

**Present: Mr. Parminder Singh Sekhon, Advocate,
for the petitioner.**

**Mr. Sumeet Puri, Advocate,
for the respondent.**

HARI PAL VERMA, J.(Oral)

CRM-33782-2018

Prayer in this application filed under Section 482 Cr.P.C. is for placing on record document i.e. Certificate dated 12.09.2018 issued by Cooperative Bank, Mansa (Annexure P-1).

Application is allowed, subject to just exceptions. The document (Annexure P-1) is permitted to be taken on record.

CRR-1710-2018

The petitioner has filed the present revision petition against the judgment dated 03.04.2018 passed by learned Additional Sessions Judge, Mansa, vide which his appeal filed against the judgment of conviction and order of sentence dated 22.01.2014 passed by learned Judicial Magistrate 1st

Class, Budhlada, was dismissed.

Briefly stated, respondent -complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) with an averment that the petitioner-accused, in discharge of his legal liability had issued a cheque bearing No.0013071 dated 12.04.2012 for a sum of ₹89,569/- drawn at Mansa Central Co-operative Bank Limited, Branch Boha, in favour of the respondent-complainant. On presentation the said cheque, it was dishonoured by the bank and was returned to the complainant along with memo dated 12.04.2012 with the remarks “Insufficient Funds”. Thereafter, a legal notice dated 16.04.2012 was issued by the respondent-complainant to the petitioner-accused, but the petitioner failed to make the payment of the cheque amount. As such, the complaint was filed against the petitioner by the respondent-complainant.

Learned Magistrate vide judgment dated 22.01.2014 convicted the petitioner 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 fine of ₹5,000/- and in default of payment of fine, to further undergo RI for a period of one month.

Feeling aggrieved of his conviction and sentence by the learned Magistrate, the petitioner filed an appeal before the Court of Sessions, but the same was also dismissed by learned Additional Sessions Judge, Mansa, vide judgment dated 03.04.2018.

It is in these circumstances, the present revision petition has been filed by the petitioner-accused against his conviction and sentence of the learned Courts below.

At the outset, learned counsel for the petitioner has not challenged the conviction of petitioner in the case and has rather confined

his arguments qua the quantum of sentence only. He has contended that during the pendency of the present petition, the petitioner has cleared the dues of the complainant-Bank under the OTS (one time settlement) scheme. He has deposited an amount of ₹64,000/- as settled between the parties and as on date, nothing is outstanding against the petitioner. He further states that the petitioner is a poor person and is unable to deposit the compounding fee, in terms of the judgment of Hon'ble Apex Court in **Damodar S. Prabhu Versus Sayed Babalal, H.2010(2) R.C.R. (Criminal) 851**. He has prayed that sentence of the petitioner may be reduced to the period already undergone by him.

Learned counsel for the respondent-complainant has not disputed the factum of one time settlement under the Bank scheme between the parties and has stated that the complainant has received an amount of ₹64,000/- under the scheme, and as on date, nothing is outstanding against the petitioner. He states that respondent-complainant has no objection in case sentence of the petitioner is reduced to the period already undergone or he is acquitted of the charge framed against him.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view 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. Similarly, the appellate Court has also dismissed the appeal. There is no illegality, infirmity or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. The scope of Revisionary jurisdiction is very limited. Even otherwise, learned counsel for the

petitioner has not assailed the judgment of conviction and restricted his arguments qua the quantum of sentence only. The conviction of the petitioner in the present case is, therefore, affirmed.

However, in view of the fact that the matter has been compromised between the parties, taking into consideration the fact that in a proceedings under Section 138 of the Act, if the accused has paid the cheque amount or has settled the dispute, this Court deems it appropriate to reduce the sentence awarded to the petitioner to the period already undergone by him.

Accordingly, the impugned judgment of conviction dated 22.01.2014 passed by learned Magistrate and affirmed by the lower appellate Court vide judgment dated 03.04.2018, 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 sentence qua fine imposed upon the petitioner shall remain intact.

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

September 26, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No