IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on : September 25, 2019.

(1) CRR-551-2019 (O&M).

Uttam Kumar Dass

... Petitioners

Versus

State of Punjab and another

... Respondents

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(2) CRR-556-2019 (O&M).

Uttam Kumar Dass

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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PRESENT Mr.Vivek K. Thakur, Advocate,
for the petitioner in both the petitions.

Mr.Bhupender Beniwal, AAG, Punjab.

Mr.I.P.S.Kohli, Advocate
for respondent No.2.

<u>ANIL KSHETARPAL, J. (ORAL)</u>

Vide this order, above mentioned two criminal revisions shall stand disposed of.

Both these revision petitions arise out of the judgments of conviction passed by the learned Judicial Magistrate First Class, Kapurthala, dated 30.9.2016 while deciding the complaints under Section 138 of the Negotiable Instruments Act, 1881 which have been affirmed by the learned Additional Sessions Judge, Kapurthala vide judgment dated 18.1.2019.

Learned counsel for the petitioner contends that the petitioner has already undergone approximately 8 months of actual sentence.

On 23.7.2019, while noticing the contention of learned counsel for the petitioner following order was passed:-

> *"The petitioner has approached this court challenging judgment dated 18.1.2019 passed by learned Additional Sessions Judge, Kapurthala whereby his conviction for offence punishable under Section 138 NI Act as recorded by Judicial Magistrate Ist Class, Kapurthala vide judgment dated 30.09.2016 has been upheld.*
>
> *Learned counsel has submitted that in the present case even as per the accounts statement produced by the complainant, the petitioner had paid a substantial amount out of the advanced amount. The learned counsel has referred to an account statement produced by complainant before Lower Court. Learned counsel has submitted that the aforesaid accounts statement shows that an exorbitant interest at the rate of 24 per cent per annum is charged, although there is no evidence that it was ever agreed that such interest would be charged and*

that the complainant has infact misused the blank cheque furnished by the petitioner and the amount mentioned on the cheque would not correspond to the amount due so as to be referred to as legal liability.

Notice of motion for 25.9.2019.

Notice regarding suspension of sentence as well."

An order to the similar effect was passed in the connected revision petition.

It is undisputed that the respondent-complainant is in the business of financing.

In para 2 of the complaint, it has been pleaded as under:-

"That accused obtained loans from the complainant society amounting to Rs.1,00,000/- on 03.09.2007 having loan account number K-114, another loan of Rs.1,00,000/- on 29.02.2008 having loan account number K-118, another loan of Rs.25,000/- on 28.06.2010, having loan account number K-188 and a loan of Rs.20,000/- on 04.02.11 having loan amount number K-214 and the accused had to repay the above said loan amounts along with interest etc. in installments but the accused paid few installments against the outstanding amount qua the above said loans and ultimately as per accounts book maintained by the complainant in routine course of business an amount of Rs.1,26,975/- remained unpaid qua the loan account no.K-114, and amount of Rs.1,26,975/- remained outstanding qua the loan account number K-118, further an amount of Rs.31730/- remained outstanding qua the loan account number K-188 and an amount of

> *Rs.35,600/- remained outstanding qua the loan account number K-214 against the accused as per the account statements attached herewith. Ultimately in order to discharge his debt/liability qua the above said loans amounts, accused issued a cheque bearing no.019387 dated 29.07.2013 for an amount of Rs.3,21,280/- (Rs.Three Lakhs Twenty One Thousand Two Hundred and Eighty only) drawn over Punjab National Bank, Kapurthala."*

Complainant has also produced statement of account which shows that the petitioner has been paying a sum of Rs.2,000/- from October 2007 to June 2010 and thereafter, paying Rs.2275/- per month from July 2010 to May 2011. Same is the position with regard to EX.C8, EX.C9 and EX.C10 although the amount of installment is different.

From the facts which have been noticed above, it is apparent that petitioner had availed certain credit facilities and was repaying the amount in small installments of Rs.2000/- per month, Rs.2275/- per month, Rs.500/- per month and Rs.600/- per month.

As per agreement, complainant firm was charging interest @ 24% per annum. Of course, the agreement to pay interest is disputed.

Both the complaints have been filed through Harminder Singh, however, name of both the complainant firms in both the cases are slightly different. Both the firms are stated to be sister concern.

Keeping in view the above facts, this Court is of the view that ends of justice would be adequately met if the sentence awarded to the petitioner is reduced to the period already undergone in both the petitions.

Ordered accordingly.

This order has been passed keeping in view the facts which have been noticed above. The sentence in both the cases shall run concurrently as the credit facility availed by the petitioner from respondent No.2 is between the same parties.

A copy of the order be placed on the file of connected case.

(ANIL KSHETARPAL)
JUDGE

September 25, 2019.
raj arora

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No