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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-506-2019 (O&M)

Date of Decision : July 25 , 2019

Romesh Kumar

.... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present : Mr. Krishan Sehgal, Advocate
for the petitioner.

Mr. Pawan Sharda, Deputy Advocate General, Punjab

Mr. Balram Singh, Advocate,
for respondent no.2.

SHEKHER DHAWAN, J.

CRM-7359-2019

For the reasons mentioned in the application, delay of 94 days
in filing the present revision petition is condoned.

CRM stands disposed of.

Main Petition.

Present revision petition is directed against the judgment of
conviction and order of sentence dated 31.07.2015 passed by learned
Judicial Magistrate Ist Class, Phagwara, whereby the petitioner-Romesh
Kumar was held guilty for commission of offence punishable under Section
138 of Negotiable Instruments Act (for short, '**the Act**') and sentenced to

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undergo simple imprisonment for a period of One year and the judgment dated 27.08.2018 passed by learned Additional Sessions Judge, Kapurthala, whereby the appeal preferred by the petitioner-accused against the aforesaid judgment of conviction and order of sentence, was dismissed.

2. Facts relevant for the purpose of decision of the present revision petition; the petitioner-accused approached Ashok Kumar Wadhwa, complainant of this case, for monetary help and the complainant gave him loan of Rs.1,25,000/- and Rs.55,600/- in August, 2009 after withdrawing the said amount from his bank account. In addition to this, the complainant also gave Rs.19,400/- to the accused by way of cheque in November, 2009 which was encashed by the accused. As such, the accused had availed a loan of Rs.2.00 Lakhs in total from the complainant. In order to discharge his legal liability, the accused issued Cheque No. 487962 dated 15.09.2011 for a sum of Rs.2,00,000/-. However, the said cheque, on presentation, was returned unpaid with the remarks "Funds Insufficient" on 29.9.2011. Despite issuance of legal notice dated 30.09.2011, the petitioner failed to make the payment to the complainant. Hence, the complaint under Section 138 of the Act was filed by the complainant against the petitioner-accused.

3. During trial, learned trial Court completed various proceedings of trial including recording statements of witnesses from both the sides and after considering the material and evidence available on record, learned trial Court held the petitioner guilty for commission of offence under Section 138 of the Act and convicted him in the manner narrated above, vide

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judgment and conviction and order of sentence dated 31.07.2015.

4. The appeal preferred by the present petitioner against the said judgment of conviction and order of sentence was dismissed by learned first appellate Court vide judgment dated 27.08.2018.

5. At the very outset, learned counsel for the petitioner contended that he does not challenge the judgment of conviction and a lenient view on the point of sentence be taken as the petitioner has already undergone substantial period of about 11 months against the awarded sentence of One year as the petitioner is in custody since 27.08.2018.

6. Learned State counsel contended that the petitioner does not deserve any concession and the present revision petition be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that both the Courts below have already appreciated the evidence in its perspective manner. As such, the present revision petition, qua judgment of conviction passed by the Court below, stands dismissed.

8. As regard to order of sentence, this Court is certainly of a considered view that a lenient view deserves to be taken in this case. The petitioner has already undergone substantial period of about 11 months against the awarded sentence of 1 year, taking a lenient view on the point of sentence, the order of sentence is modified that the sentence awarded to petitioner, Romesh Kumar in this case, shall be reduced to the period he has already undergone while remaining in custody in this case. The petitioner be released from custody, if not required in any other case.

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9. Resultantly, the present revision petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

July 25, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes