

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

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**CRR No.782 of 2019 (O&M).
Date of Decision: 16.07.2019.**

Rohtash alias Dindayal alias DeenamPetitioner.

Versus

Birwati and anotherRespondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.

Mr. Arjun Singh Yadav, Assistant Advocate General,
Haryana.

Shekher Dhawan, J.

Present revision petition is directed against the judgment of conviction and order of sentence dated 08.06.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby the petitioner-accused was held guilty for commission of offence punishable under Section 138 of Negotiable Instruments Act (for short, 'the Act') and sentenced to undergo simple imprisonment for a period of six months and was directed to pay compensation to the tune of Rs.4,80,000/- i.e. 1.5 times of the cheque amount approximately, to the complainant (respondent No.1 herein) under Section 143(1) (proviso) of the Act read with Section 357(1)(3) of the Code of Criminal Procedure (for short, 'Cr.P.C.') within a period of one month from the passing of the judgment by the trial Court, and the judgment dated 01.02.2019 passed by learned Sessions Judge, Faridabad, 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; petitioner-accused approached Amar Singh (brother-in-law of the complainant) and assured him to get employment in Sugar Mill against payment of Rs.10 Lakh. Said Amar Singh paid Rs.6,72,000/- to the petitioner and agreed to pay the remaining amount at the time of issuance of appointment letter. To manage the funds, Amar Singh executed an agreement to sell his land to Kumar Pal on 29.03.2013 and another agreement with Mukhtiyar Singh (father of Kumar Pal) on 28.03.2014 without cancelling the previous agreement. The petitioner instead of getting Amar Singh employed purchased a truck bearing registration No.HR-38S-7488. The complainant arranged the money and got land of Amar Singh released from Mukhtiyar Singh after paying him Rs.6,72,000/- with interest at the rate of 2 per cent. The complainant lodged complaint with the police and in pursuance of the compromise, the petitioner agreed to transfer the abovesaid truck in favour of the complainant on 28.10.2014. However, on 25.11.2014, the petitioner took the truck back and after paying Rs.32,000/- in cash issued two post dated cheques for balance amount of Rs.6,40,000/- to the complainant. Cheque No.035773 dated 17.12.2015 for Rs.3,20,000/-, on presentation, was returned unpaid with the remarks "Funds Insufficient" on 19.12.2015. Thereafter, petitioner issued a fresh cheque No.035774 dated 23.05.2016, which was also returned unpaid with the same remarks on 02.07.2016. Despite issuance of legal notice dated 22.06.2016, the petitioner failed to 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 plea of defence under Section 263(g) Cr.P.C., recording statements of witnesses from both the sides. 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 judgment and conviction and order of sentence dated 08.06.2018.

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 01.02.2019.

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 actual sentence of 05 months and 15 days against the awarded sentence of 06 months as per the custody certificate dated 15.07.2019.

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.

As per the custody certificate dated 15.07.2019, the petitioner has already undergone actual sentence of 05 months and 15 days against the awarded sentence of 06 months, taking a lenient view on the point of sentence, the order of sentence is modified that the sentence awarded to petitioner, Rohtash alias Dindayal alias Deenam 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. However, no interference is called for in the observations of the trial Court regarding payment of compensation and the same stand affirmed.

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

(SHEKHER DHAWAN)
JUDGE

16.07.2019
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No