

247 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3364-2015

Date of decision-04.09.2019

Gurjant Singh

....Petitioner

Vs.

Harpreet Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gaurav Goel, Advocate for the petitioner.

Mohd. Yousaf, Advocate for the respondent.

MANOJ BAJAJ, J.

This revision petition brought by the convict challenges the appellate Court judgment dated 22.04.2015 whereby the judgment of conviction dated 11.06.2014 passed by the trial Court in a complaint case under Section 138 Negotiable Instruments Act, 1881 and sentencing him for a period of one year along with compensation of Rs.62,500/- was upheld.

The brief facts of the present case as noticed in the judgment passed by Appellate Court are as under:-

“That the accused borrowed an amount of Rs.1,25,000/- from the complainant in the month of November 2012 for personal domestic needs and the accused promised to return the said amount to complainant within two months. It has been further submitted that in order to discharge the payment from the aforesaid liability, the accused issued a cheque bearing its No.519576 dated 21.03.2013 for a sum of Rs.1,25,000/- drawn on the Bank of Rajasthan Ltd.Choti Baradari, Patiala in favour of the

complainant with an assurance that the same would be encashed as and when presented to the banker of the accused for encashment. The complainant presented the abovesaid cheque for clearance with his bank, but the abovesaid cheque was bounced and returned vide memo dated 22.03.2013 by the banker with remarks "Dormant account". Thereafter, the complainant issued a notice dated 05.04.2013 to accused through his counsel but the accused failed to make the payment of cheque amount despite receipt of said notice and lapse of statutory notice period of 15 days."

After recording the pre summoning evidence, the trial Court summoned the accused and after appearance of accused, recorded the evidence of prosecution. Thereafter, statement of the accused-petitioner was recorded under Section 313 Cr.P.C. wherein he denied the allegations and pleaded false implication. In his defence, Vikas Batish, Senior Officer, ICICI Bank Branch was examined as DW-1.

The learned trial Court after examining the evidence on record and relying upon the testimony of witnesses held the accused guilty for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and convicted and sentenced him as noticed above, through its judgment and order of sentence dated 11.06.2014.

Appeal filed against the aforesaid judgement of conviction and order of sentence was dismissed by the appellate Court on 22.04.2015.

It may be noticed here that the revision petition was confined only to the issue of quantum of sentence as the challenge to the conviction

part was given up on 11.07.2017. During the pendency of the revision petition through CRM-29467-2015, a prayer for suspension of sentence was made as the applicant-petitioner had already undergone a period of eight months and this Court on 18.12.2015, suspended the sentence of the petitioner.

Learned counsel for the petitioner contends that the petitioner is a poor person and has no means to make the payment of compensation as awarded. He submits that the ends of justice would be met if the sentence is reduced to the period already undergone by setting aside the compensation part. It is further submitted that convict is the sole bread winner and lenient view be taken by modifying the sentence part.

On the other hand, learned counsel appearing on behalf of the complainant has opposed the prayer on the ground that the amount of loan in question was taken by the accused in the month of November, 2012 for his personal domestic needs and to discharge the said burden, the cheque in question was issued. He submits that if the petitioner is not able to make the payment, the concession of suspension of sentence be withdrawn and the sentence imposed by the Courts below be upheld.

After hearing learned counsel for the parties, this Court finds that the complainant was well aware of the financial status of the accused as the financial help was advanced to the accused for meeting his domestic needs. It is not a case where the transaction pertains to any business or any commercial deal between the two parties. The aim and object of the Negotiable Instruments Act, 1881 is largely aimed to confer certain

privileges to the mercantile instrument.

Learned counsel appearing on behalf of the complainant does not dispute this fact that there was no business transaction between the parties. He fairly states that the complaint was founded on the ground that the amount was given to the accused to meet his domestic needs.

Considering the custodial period of the petitioner and the fact that he has suffered the agony of trial and appeal for a period of more than six years, therefore, the ends of justice would be met if the sentence imposed by the trial Court is modified to the period already undergone. Therefore, while upholding the conviction of the petitioner under Section 138 of Negotiable Instruments Act, 1881, the sentence awarded to the petitioner by the trial Court is modified to the period already undergone by him. The petitioner be set at liberty forthwith, if his custody is not required in any other case. The petitioner is on bail. His bail bonds and surety bonds shall stand discharged.

With the above modification, the revision petition stands disposed off.

(MANOJ BAJAJ)
JUDGE

04.09.2019
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No