

..

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1212-2018 [O&M]
Date of Decision:- May 17, 2019

Ramesh Kumar Petitioner

Versus

Bhagirath and another Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Surinder Garg, Advocate,
for the petitioner.

None for respondent No.1.

Mr. Rajat Bansal, AAG, Punjab
for respondent No.2.

SHEKHER DHAWAN, J.

Present revision petition is directed against the judgment of conviction and order of sentence dated 16.05.2017 passed by learned Judicial Magistrate Ist Class, Abohar whereby the revisionist was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short, "**the Act**") and sentenced to undergo Simple Imprisonment for a period of One Year and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo SI for one month.

2. The appeal filed by the revisionist was dismissed by learned Additional Sessions Judge, Fazilka vide judgment dated 02.02.2018.

..

3. Facts relevant for the purpose of decision of present revision petition; that the petitioner in discharge of legal liability towards the respondent-complainant, issued cheque bearing No.817727 dated 18.03.2014 amounting to Rs.1,20,000/- (Ex.P1) and on presentation, the cheque was dishonoured on account of "Funds Insufficient" vide memo dated 18.03.2014 (Ex. P2). The complainant issued a legal notice (Ex.P4), but despite that, the petitioner did not make the payment and subsequently complaint under Section 138 of the Act was filed before learned Magistrate.

4. During the trial, Learned Magistrate completed various proceedings, including serving of notice of accusation upon the accused, recording of evidence and examining the accused under Section 313 Cr.P.C., and after considering the prosecution evidence and defence evidence held the present revisionist guilty and convicted and sentenced under Section 138 of the Act.

5. Appeal preferred by the revisionist was dismissed by learned Additional Sessions Judge vide judgment dated 02.02.2018 and as such the present revision petition before this Court.

6. At the time of arguments, learned counsel representing the petitioner contended that he does not challenge the judgment of conviction and order of sentence passed by learned Magistrate and the judgment passed in appeal as well, but a lenient view on the point of sentence be taken as the petitioner has already undergone actual sentence of 07 months and 24 days and including remission, it is 08 months and 26 days, against the awarded sentence of 01 year as per the custody certificate dated 14.05.2019.

..

7. Learned counsel representing respondent No.2-State contended that the petitioner does not deserve any concession and the present revision petition be dismissed.

8. 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.

9. As regard to order of sentence, this Court has certainly considered that a lenient view is to be taken in this case. The petitioner has already undergone actual sentence of 07 months and 24 days and including remission, it is 08 months and 26 days, against the awarded sentence of 01 year as per the custody certificate dated 14.05.2019, taking a lenient view on the point of sentence, the order of sentence is modified to the extent that the sentence of petitioner, Ramesh Kumar in this case shall be reduced to the period he has already spent while remaining in custody during the period of trial and appeal proceedings. The petitioner be released from custody in this case, if not required in any other case.

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

May 17, 2019

som/jitender

**(SHEKHER DHAWAN)
JUDGE**

Whether Speaking/Reasoned : Yes

Whether Reportable : Yes