

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

CRR-4781-2017 (O&M)

Date of decision : 17.09.2019

M/s Orbit Computer & Media Services

...Petitioner

Versus

M/s O.S.T. Electronics Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Balraj Singh, Advocate for the petitioner.

Ms. Sonia Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J.

Convict has assailed the judgment of conviction passed by the learned Judicial Magistrate in complaint under Section 138 of the Negotiable Instruments Act, affirmed in appeal.

Petitioner-convict was sentenced to undergo rigorous imprisonment for a period of 1 year. He was also directed to pay compensation equivalent to the cheque amount i.e. ₹10,50,000/-. The sentence against the aforesaid judgment has been maintained.

This Court has heard learned counsel for the parties.

Learned counsel for the petitioner submits that petitioner has all bona fide intentions to pay the amount, however, he is unable to pay.

He submitted that after the judgment was passed by the learned Appellate

Court, parties had entered into a settlement and agreement (Annexure P-1) was drawn. Pursuant thereto, petitioner did pay a sum of ₹3,57,000/- to the complainant. Remaining payment was agreed to be paid in small installments, however, due to severe financial difficulty, the petitioner is unable to pay.

It may be noted here that in the order dated 19.12.2017, this fact was noticed and counsel appearing for the complainant also does not dispute this fact. The case was thereafter adjourned awaiting payment of the remaining amount which admittedly the petitioner has not paid.

On the other hand, learned counsel for the respondent has submitted that the petitioner is dishonest as in spite of having agreed, petitioner has not paid the amount and, therefore, he does not deserves any leniency.

This Court has considered the submissions.

It is not disputed that amount of ₹3,57,000/- has been paid by the petitioner to the respondent. That agreement and part payment is at least indicating to the effect that the petitioner has the intention to pay but he is unable to pay. This Court is conscious of the fact that on some of the occasions, due to financial difficulty or losses in the business, convicts are unable to pay.

Keeping in view the aforesaid facts and also the fact that the learned Courts have already ordered that the entire cheque amount shall be liable to be paid as compensation which can be recovered by the complainant in accordance with the procedure laid down in the Code of

Criminal Procedure, this Court is of the view that the ends of justice would be met particularly in this case, in reducing the sentence from a period of 1 year to 3 months.

This order has been passed keeping in view the payment of ₹3,57,000/- having been paid and intention of the petitioner to pay but due to adverse circumstances, inability to pay.

In view of the above, the present revision petition is disposed of.

17.09.2019
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No