

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-4832 of 2017 (O&M)

DATE OF DECISION: FEBRUARY 13, 2019

ISHWAR SINGH

...PETITIONER

VERSUS

AMARJIT KAUR & ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. SANDEEP VERMA, ADVOCATE
FOR THE PETITIONER.

MR. ANKUSH CHOWDHARY, ADVOCATE
FOR RESPONDENT NO.1.

MR. BHUPENDER BENIWAL, AAG, PUNJAB

MANOJ BAJAJ, J.

The petitioner has filed this revision petition against the judgement dated 22.11.2017, passed by Addl. Sessions Judge, Patiala, whereby the judgement of conviction dated 21.3.2017, passed by the trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentencing the convict to undergo R.I. for 1 year and to pay a fine of ₹5000/- and in default of payment of fine, to further undergo Simple Imprisonment for 1 month, was upheld.

It is the case of the prosecution that on 15.7.2015, the petitioner took loan of ₹1,50,000/- from the complainant and to discharge his liability, issued a cheque bearing No.29224 dated 4.8.2015 drawn at Canara Bank, Nabha in favour of the complainant. Upon presentation on 5.8.2015 in the bank, the cheque was returned by the Bank with the endorsement “funds

insufficient". A Legal Notice dated 14.8.2015 was served, however, the accused(convict) failed to pay the amount, thereby compelling the complainant to file the complaint.

The trial Court after relying upon the evidence adduced by the complainant found him guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and convicted and sentenced him as mentioned above.

The petitioner challenged the aforesaid judgment of conviction and sentence by filing the appeal before the appellate Court which was also dismissed. Hence the present revision petition. During the pendency of the petition, an attempt was made by convict to return the amount and a sum of ₹50,000/- was paid by way of demand draft No.389317 dated 17.01.2018, issued by Punjab National Bank, HVB, Chhoti Baradari, Patiala. However, remaining amount of ₹1 lakh could not be arranged by the convict.

Learned counsel for the petitioner states that without challenging the order of conviction, he confines his prayer only to the sentence part awarded to the petitioner. Learned counsel submits that the petitioner is not in a position to pay the rest of the amount and in lieu has suffered sufficient incarceration. He further states that there was no bad intention in the mind of the petition to dupe respondent No.1, as the petitioner has already returned a sum of ₹50,000/- to respondent No.1. Lastly, learned counsel for the petitioner has prayed that as the petitioner is more than 60 years old and as sufficient period has been spent by him in custody, therefore, some leniency may be shown towards the petitioner and

he be sentenced to the period already undergone by him.

Learned counsel for the State as well respondent No.1, however, opposed the aforesaid prayer of learned counsel for the petitioner. It has been submitted that the petitioner undertook before this Court to return the whole amount to respondent No.1 and as he has failed to honour his words, therefore, the petitioner does not deserve any leniency.

A perusal of the case file shows that on 17.1.2018, as the petitioner handed over a demand draft of ₹50,000/- in favour of the respondent No.1, notice of motion was issued and interim bail was granted to the petitioner by this Court and the petitioner was asked to make available the schedule of outstanding payment. As the petitioner failed to comply with the order dated 17.1.2018, this Court issued show cause notice to the petitioner on 9.7.2018, as to why the interim bail granted to him may not be cancelled. Thereafter, on 10.10.2018, the petitioner undertook to pay the balance amount on or before 11.11.2018. However, on 28.11.2018, this Court vacated the order dated 17.1.2018, granting interim bail to the petitioner.

No doubt, the petitioner had taken a loan amount of ₹1,50,000/- from complainant/respondent No.1 and returned an amount of ₹50,000/- on 17.01.2018 to the petitioner. This fact is not disputed by learned counsel appearing for complainant/respondent No.1. The petitioner was sentenced to undergo R.I. for 1 year, however, he has undergone a period of 4 months. Keeping in view the nature of offence, the age of the petitioner, and the fact that the transaction relates to the year 2015, this Court is of the view that

ends of justice would be met, if the sentence of petitioner is reduced to 6 months.

In view of the above, while upholding the conviction of the petitioner, the sentence of R.I. for 1 year awarded to the petitioner is reduced to 6 months. However the fine part and the default sentence awarded to the petitioner shall remain intact.

With the above modification in the order of sentence, the revision petition stands disposed off.

February 13, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes