

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 4851 of 2017

Date of Decision: 04.12.2019

Kala Ram

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. S.S.Cheema, AAG, Punjab.

None for respondent No. 2.

HARNARESH SINGH GILL, J

The petitioner was tried for committing the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'). Vide judgment and order dated 13.1.2015, learned Sub Divisional Judicial Magistrate, Phul, held the petitioner guilty under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000/- and, in default of payment thereof, to further undergo rigorous imprisonment for two months and also directed him to pay compensation to the tune of the cheque amount under Section 357 Cr.P.C. read with Section 117 of the Act.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Bathinda. Vide judgment dated 21.10.2016, the

learned Additional Sessions Judge, Bathinda, dismissed the appeal filed by the petitioner, thereby affirming the judgment and order passed by the learned Magistrate. Still aggrieved, the petitioner has preferred the present revision petition.

As per the facts of the present case, the complainant filed the present complaint under Section 138 and 142 of the Act. Petitioner-accused had availed loan of Rs. 3,00,000/- from the complainant in July 2011. In order to discharge the liability, the petitioner-accused issued cheque No. 558261 dated 28.5.2012 for a sum of Rs. 3,00,000/- of Punjab National Bank, Branch Office, Rampura Phul. The complainant presented the above mentioned cheque for encashment but the same was returned dishonoured with remarks "insufficient funds". The complainant served a legal demand notice on the accused on 6.6.2012 to make the payment of the cheque amount within a period of 15 days from the receipt of the legal notice but the accused has failed to do the same. Hence, the complaint in question was preferred by the respondent.

After recording of the preliminary evidence, accused was summoned to face the trial under Section 138 of the Act. Upon appearance, notice of accusation was served to the accused to which he pleaded not guilty and claimed trial.

In order to prove his case, complainant himself appeared in the witness box as CW-1 and also examined CW-2 Dr. N.R.Bishnoi, Branch Manager of Allahabad Bank, CW-3 Reema, CW-4 Netu Singh and CW-5 Jagjit Singh.

In the statement recorded under Section 313 Cr.P.C., the petitioner had denied the allegations and pleaded false implication.

In defence, the petitioner had examined Kaka Singh as DW-1.

During the course of arguments, counsel for the petitioner confined his prayer only to the quantum of sentence imposed upon the petitioner.

I have heard the learned counsel for the parties and with their able assistance, have gone through the record of the Courts below.

As the prayer made by the petitioner is restricted only to the sentence, therefore, the findings recorded by the Courts below convicting the petitioner do not call for any interference and the same are accordingly affirmed.

As per the findings of the Courts below, the complainant had fully proved the cheque in question by way of oral as well as documentary evidence. The accused had failed to rebut the presumption of Negotiable Instruments Act and failed to discharge his liability.

As per the custody certificate, the petitioner has already undergone 04 months and 11 days of actual sentence out of total sentence of one year imposed upon him. Therefore, in view of the facts and circumstances of the case, the plea of the learned counsel for the petitioner for reducing the sentence of the petitioner to the period already undergone by him, is accepted.

Keeping in view the above facts and circumstances of the present case, I feel that ends of justice would be suitably met, if the sentence awarded to the petitioner is reduced to the period already undergone with no change in the fine clause.

Accordingly, the conviction of the petitioner, under Section 138 of the Act is maintained. However, by upholding the fine imposed by the learned Magistrate, sentence qua imprisonment of the petitioner is

reduced to the period already undergone by him.

It has brought to the notice of this Court that the petitioner had also filed CRM-41527-2017 for staying the recovery of amount of compensation. The Co-ordinate Bench of this Court vide order dated 12.2.2018, had stayed 50% of the compensation amount during the pendency of the petition and the petitioner was directed to deposit the remaining 50% of the compensation amount.

Learned counsel for the petitioner submits that the remaining 50% amount of compensation has not been deposited by the petitioner.

Accordingly, the order dated 13.1.2015 qua the compensation amount to the tune of cheque amount, is upheld.

With the aforesaid order, the revision petition is disposed of.

(HARNARESH SINGH GILL)
JUDGE

December 04, 2019
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No