

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

436

**CRR-2948-2016 (O&M)
Date of decision :05.04.2019**

Ravel Singh

... Petitioner

Versus

Bhupinder Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sehaj Bir Singh, Advocate for the petitioner.

None for respondent No.1.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

The present criminal revision has been filed against the judgment dated 13.07.2016, passed by Additional Sessions Judge, Ferozepur vide which the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 06.04.2013 whereby the petitioner was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month under Section 138 of the Negotiable Instruments Act, 1991 (for short, 'the Act') passed by Judicial Magistrate Ist Class, Ferozepur.

Brief facts of the present case are that respondent-Bhupinder Singh complainant had alleged that the petitioner was in need of Rs.3 Lacs for his personal use and thus, had obtained a loan from him, which was advanced to the petitioner in January, 2009. The said amount was agreed to

be repaid along with interest @ 2% per month. The petitioner had agreed to return the amount on the arrival of his crops in the year 2009 itself. Thus, the petitioner had issued a cheque No. 328258 dated 15.05.2009 amounting to Rs.3 Lacs in favour of the respondent. On presentation, the said cheque was returned with the remarks "Insufficient Funds" and the respondent was informed by the Bank on 15.05.2009. The respondent had requested the petitioner to pay the due amount but all in vain. Ultimately, complainant served upon the petitioner a legal notice dated 21.05.2009 through his counsel Sh. Ravinder Kapila, Advocate, and also sent a telegram notice. The petitioner neither gave reply to the legal notice or the telegram notice nor returned the due amount. Thus, the respondent had preferred a complaint under Sections 138/142 of the Act.

In the preliminary evidence, the complainant stepped into the witness box as CW-1. On the closure of the respondent's evidence, statement of the petitioner was recorded under Section 313 Cr.P.C. The petitioner had denied all the allegations and claimed to be innocent.

In defence, petitioner had examined Mr.Avtar Singh, Clerk of Oriental Bank of Commerce, Mandot Branch.

After taking into consideration, the evidence on record and hearing learned counsel for the parties vide judgment and order dated 06.04.2013, the trial court convicted and sentenced the petitioner for the offence punishable under Section 138 of the Act, as noticed above. The appeal filed by the petitioner was dismissed by the Additional Sessions Judge, Ferozepur vide judgment dated 13.07.2016.

I have heard the arguments raised by learned counsel for the petitioner and learned State counsel and with their able assistance, I have

perused the record of the case.

At the outset, it was brought to the notice of this court that during the pendency of the present revision, a compromise had been effected between the parties. Qua that, criminal miscellaneous No. 28265 of 2016 was filed by the petitioner along with affidavit dated 24.10.2016 of petitioner-Ravail Singh son of Amar Singh, affidavit dated 24.10.2016 of respondent No.1-Bhupinder Singh son of Mukhtiar Singh, had already been placed on record. It has been stated in the affidavit of respondent-Bhupinder Singh-complainant that he had received the due amount and, thus, nothing is due towards Ravail Singh-petitioner. Respondent- Bhupinder Singh had stated in his affidavit that he has no objection, if Ravail Singh-petitioner is acquitted by the court.

Since the due amount has been paid by petitioner-Ravail Singh and affidavit to that effect has also been placed on record, it is a fit case for reducing the sentence of the petitioner to the period already undergone by him.

In the present case, the petitioner has been facing the agony of trial for the last more than 6 years. Not only this, the respondent-complainant had appeared in person, duly identified by his counsel before this court on 04.10.2016 and stated that he had received the due amount. Order dated 04.10.2016 is reproduced hereunder:-

Main Case

Heard.

Admitted.

The complainant/respondent No.1 is present in person, duly identified by his counsel, states that he has received the amount i.e. Rs.2 lacs as against the claimed amount of Rs.3 lacs. However, the learned counsel for

respondent No.1, on instructions, states that now the compromise has been reached between the parties. In these circumstances, the parties are directed to file an affidavit(s) with regard to compromise within three weeks from today.

Post for final disposal on 07.11.2016

In the meantime, records of the Courts below be requisitioned.

CRM-25789-2016

In view of above compromise, without expressing any opinion on the merits of the case, the present application is allowed and the sentence of the applicant-petitioner is suspended during the pendency of the revision petition, on his furnishing bail bonds to the satisfaction of CJM/Duty Magistrate, Ferozepur.""

The Hon'ble Supreme Court in ***M/s. Spacemakers and Another Versus M/s Mansi Trading Co.***, 2018(5) RCR (Criminal) 402, while considering the factum of the accused therein having paid the entire cheque amount, reduced the sentence of the accused to the period already undergone by him. It was held as under:-

3. In terms of order dated 23.1.2018 passed by this Court, the appellant was directed to deposit the entire sum of ₹17,00,000/- (Rupees Seventeen Lakhs) with the High Court within fifteen days and exemption from surrendering was granted subject to that condition till the matter was heard. The said amount has been deposited.

4. Mr. Subramonium Prasad, learned senior counsel appearing for the appellant had made a impassioned plea on 5.3.2018 that since the appellant has now deposited the entire amount of ₹17,00,000/- (Rupees Seventeen Lakhs), the direction to serve the remaining sentence be set aside. He further volunteer on behalf of

the appellant to donate a sum of ₹3,00,000/- (Rupees Three Lakhs) for a good cause to redeem himself specially taking into consideration the time consumed in the judicial process of the trial of the case.

5. xxx xxx xxx xxx

6. *On hearing learned counsel for the appellant(s), we are inclined to accept the request of the learned senior counsel and thus direct that the sum of ₹17,00,000/- (Rupees Seventeen Lakhs) deposited by the appellant be released in favour of the respondent and the pay order of ₹ 3,00,000/- (Rupees Three Lakhs) be transmitted by the Registry to the War Widows Association at Shaheed Bhawan, 18/1, Aruna Asaf Ali Marg, New Delhi-110067. The appellant having served the sentence of 42 days out of the one year sentence, the direction to the appellant-accused to undergo the remaining sentence as per the impugned order is set aside and the sentence modified to the period already undergone."*

As per the custody certificate placed on record by the learned State counsel, the petitioner has already undergone a period of 2 months and 23 days out of the 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 imposed upon the petitioner to the period already undergone by him, is accepted.

Thus, Bhupinder Singh (complainant) is satisfied and has tendered an affidavit before this court to the effect that the matter has been compromised between the parties.

This Court is, thus, of the considered view that ends of justice would be fully met, in case, the substantive sentence of the petitioner is reduced to the period already undergone by him but with no change in the fine clause.

In the light of what has been discussed above while upholding the conviction of the petitioner under Section 138 of the Act, the substantive sentence imposed upon him is reduced to the one already undergone by him. However, there shall be no change in the fine clause.

Disposed of in the above terms.

05.04.2019
pooja saini

(HARNARESH SINGH GILL)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>