

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2752 of 2019

DATE OF DECISION: NOVEMBER 29, 2019

RAM DASS

...PETITIONER

VERSUS

GULSHAN JOHAN

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. AMARDEEP SINGH GILL, ADVOCATE
FOR THE PETITIONER.

NONE FOR THE RESPONDENT.

MANOJ BAJAJ, J.(ORAL)

The petitioner has filed this revision petition challenging the judgement dated 10.4.2019, passed by the Sessions Judge, Jalandhar, whereby the judgment of conviction and order of sentence dated 16.3.2017, passed by the Judicial Magistrate Ist Class, Phillaur convicting the petitioner under Section 138 Negotiable Instruments Act and sentencing him to undergo rigorous imprisonment for 2 years alongwith fine of ₹3000/- and in default to undergo a further period of 2 months was affirmed.

The prosecution case is based on a complaint given by Gulshan Johan to the effect that he and the convict were known to each other and the convict borrowed an amount of ₹90,000/- from him on 14.8.2012 for personal need and assured to return the same within a short period. Thereafter on a demand made by the complainant, the convict issued a cheque bearing No.773143 dated 10.11.2012 for an amount of ₹90,000/- in favour of the complainant. On presentation of the same by the complainant,

the said cheque was returned back on 14.11.2012 with the remarks 'insufficient funds'. The complainant again presented the said cheque, but the same was again returned on 26.11.2012 with remarks 'insufficient funds'. Thereafter a legal notice was served upon the accused, however, the amount was not paid by him thereby compelling the complainant to institute the complaint.

After examining the pre-summoning evidence, the trial Court summoned the accused under Section 138 of the Act and upon appearance, he pleaded not guilty and claimed trial.

The trial Court after examining the material available on record, held the accused guilty and convicted and sentenced him as noticed above. Aggrieved against the said judgement dated 16.3.2017, the convict preferred an appeal before the Sessions Judge, Jalandhar and the same was also dismissed.

Hence the present revision petition.

On 16.11.2019, after arguing for sometime, learned counsel for the petitioner had given up the challenge to the conviction part in the impugned judgement and confined his prayer to the sentence part alone. It has been contended that the petitioner is a poor labourer and took a friendly loan to fulfill his and his family's basic needs. He submits that out of the awarded sentence of 2 years rigorous imprisonment, the petitioner has already served the sentence for a period of more than 7 months. He further submits that keeping in view the facts and circumstance of the present case, the sentence awarded is on higher side and therefore, the same may be modified to the one already undergone by petitioner.

No one is present on behalf of the respondent-complainant. As per office report, notices sent by ordinary process as well as dasti process have been not received back served or otherwise. As the petitioner is in custody and considering the limited prayer made in this petition, this Court is not inclined to issue fresh notice to the complainant. However, it shall be open for the complainant to approach this Court in case he feels dissatisfied with the nature of order passed in the present petition.

After hearing learned counsel for the petitioner, this Court finds that the cheque in question was issued in favour of the accused to facilitate him to meet the domestic needs. The object of the Act is mainly aimed to strengthen the transactions pertaining to the mercantile instruments. In the present case, the cheque amount of ₹90,000/- was given in the year 2012 and considering the agony of protracted trial/appeal suffered by the convict, this Court is of the opinion that it would be expedient if the sentence imposed by the trial Court is reduced to the period already undergone by him.

Resultantly, affirming the judgement of conviction passed by the appellate Court, the petition is partly allowed and the sentence awarded to the petitioner is modified to the period already undergone by him. The amount of fine shall remain intact. Petitioner Ram Dass, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case.

November 29, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes
Whether Speaking/Reasoned : Yes