

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 898 of 2009 (O&M)
Date of Decision: 20.03.2020

Surta Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. N.S.Sodhi, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, 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 09.5.2008, learned Judicial Magistrate Ist Class, Ferozepur 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. 5,000/- and, in default of payment thereof, to further undergo rigorous imprisonment for one month.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Ferozepur. Vide judgment dated 19.3.2009, the learned Additional Sessions Judge, Ferozepur, dismissed the appeal filed by the petitioner, thereby affirming the judgment and order passed by the learned trial Magistrate. Still aggrieved, the petitioner has preferred the present revision petition.

Brief facts of the present case are that the petitioner-accused

had obtained an amount of Rs. 6,00,000/- from the complainant-respondent as loan and in order to discharge his liability of debt, he had issued a cheque No. 356982 dated 4.11.2003 for a sum of Rs. 6,00,000/- in favour of the complainant. The said cheque was presented for encashment but the same was returned unpaid with the remarks "insufficient funds" vide memo dated 01.12.2003. Thereafter, a legal notice dated 23.12.2003 was issued to the petitioner but to no effect. Hence, the complaint under Section 138/142 of the Act was filed.

After preliminary evidence, petitioner was summoned under Section 138 of the Act.

Notice of accusation was served upon the petitioner to which he pleaded not guilty and claimed trial.

The complainant had examined three witnesses including himself.

Statement of accused under Section 313 Cr.P.C. was recorded. All the incriminating material was put to the accused, which he denied and pleaded innocence.

On the basis of the evidence led, it stood proved before the learned trial Court that as per the statement of account (Ex. C1), the accused-petitioner had very less money left in his account. Ex. C2, the cheque book register showing the cheque issued by the bank and Ex. C3, the cheque return register revealed that cheque No. 356982 was not honoured on account of insufficient funds. Ex. C6 which is the statement of account of the complainant whereby Rs. 6,00,000/- was shown to have been deposited and withdrawn. It has also been held by the trial Court that it was evident that Rs. 6,00,000/- was borrowed by the accused from the

complainant and accordingly the cheque in question was issued by the accused to discharge his legally existing liability. Accordingly, the petitioner was convicted and sentenced under Section 138 of the Act. In appeal conviction and sentence of the petitioner was upheld.

At the outset, learned counsel for the petitioner has confined his arguments to the quantum of sentence.

Learned counsel for petitioner submits that the petitioner has undergone 04 months and 10 days of sentence out of total sentence of one year. On these premises, learned counsel for the petitioner prays that the substantive sentence imposed upon the petitioner may be reduced to the one already undergone by him. He has relied upon the judgments passed by this Court in ***Ganga Prashad versus Lalit Kumar 2008 (3) R.C.R. (Criminal) 159*** and ***Naresh Nath Tivari versus State of Haryana and another 2015(45) R.C.R. (Criminal) 962***.

Per contra, learned State counsel opposes the prayer made by the learned counsel for the petitioner and prays for dismissal of the present petition.

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

Both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioner. Learned counsel for the petitioner has failed to point out any misreading of evidence by the Courts below warranting interference by this Court. Accordingly, the findings recorded by the Courts below convicting the petitioner do not call for any interference and the same are accordingly affirmed.

While coming to the sentence part, by now, the petitioner has

undergone 04 months and 10 days of sentence out of substantive sentence of one year. In my opinion, the ends of justice would be suitably met if the sentence awarded to the petitioner is reduced to the period already undergone by him.

In view of the above, while upholding the conviction of the petitioner under Section 138 of the Act, the substantive sentence imposed upon the petitioner is reduced to the period already undergone by him. However, the petitioner shall pay the compensation amount of Rs. 6.00 lacs to the complainant within a period of three months from today failing which the revision petition shall be deemed to have been dismissed and the orders passed by the Courts below will come into effect.

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

(HARNARESH SINGH GILL)
JUDGE

March 20, 2020
Gurpreet

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