

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3717-2018 (O&M)

DATE OF DECISION: JULY 31, 2020

CHANDER BHAN

...PETITIONER

VERSUS

BANK OF BARODA AND ANR.

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ASHOK KUMAR SAMA, ADVOCATE
FOR THE PETITIONER.

MR. GAURAV GOEL, ADVOCATE
FOR RESPONDENT NO.1.

MR. LUVINDER SOFAT, AAG, PUNJAB.

MANOJ BAJAJ, J.(ORAL)

CRM-17484-2020

This is an application for preponing the date of hearing in above criminal revision from 30.9.2020 to an early date wherein notice was issued on 28.7.2020.

Learned counsel for the respondents have not opposed the prayer, resultantly, the date of hearing in the main case is preponed to today.

Application stands disposed off.

CRR-3717-2018

The petitioner has preferred this criminal revision petition challenging the Appellate Court judgment dated 29.8.2018, passed by the learned Addl. Sessions Judge, Fazilka, whereby the judgment of conviction & order of sentence dated 25.11.2014, passed by the Sub Divisional Judicial Magistrate, Abohar in case criminal complaint No.45-2 of 20.1.2012 under

Section 138 Negotiable Instruments Act, 1881 was upheld.

The facts leading to the revision petition are noticed below.

A complaint was filed by Complainant-Bank of Baroda through its Branch Manager and Principal Officer on the allegations that on 19.4.2008, a loan of Rs.10 lakhs was sanctioned in favour of the accused as KCC Limit and in order to discharge his liability towards the complainant-Bank, the accused issued a cheque bearing No.106227 dated 6.12.2011 (drawn at Indian Overseas Bank, Abohar Branch) for a sum of Rs.11,60,000/- in its favour. The said cheque was presented for encashment, but the same dishonored for want of sufficient funds and was returned with memo dated 7.12.2011. The complainant served a statutory legal notice dated 12.12.2011 upon the accused asking him to pay the amount, but the accused failed to adhere to the said demand. Therefore, the present complaint under Section 138 Negotiable Instruments Act, 1881 was filed.

After examining the pre-summoning evidence, the trial Court vide its order dated 20.12.2012, summoned the accused to face trial for commission of an offence punishable under Section 138 Negotiable Instruments Act, 1881.

To prove its case, the prosecution examined 2 witnesses CW1 Rakesh Kumar Goyal, Sr. Manager and CW2 P.C. Tungaria, Sr. Manager and also tendered documents Exhibits C1 to C12 in support of the case. Thereafter, statement of accused was recorded under Section 313 Cr.P.C. wherein all the incriminating material was put to him, who in response pleaded innocence. However, no evidence was led by accused in his

defence.

The trial Court after examining the evidence on record found the accused guilty for the offence punishable under Section 138 Negotiable Instruments Act, 1881 and accordingly, convicted him and imposed a sentence of 2 years R.I. alongwith fine of Rs.10,000/- and in default to further undergo rigorous imprisonment for 6 months.

Aggrieved against the judgement dated 25.11.2014 passed by the trial Court, an appeal was carried by the convict before the Addl. Sessions Judge, Fazilka who affirmed the trial Court verdict and dismissed the appeal on 29.8.2018.

Hence, the present revision petition.

Learned counsel for the petitioner submits that he does not press his challenge to the conviction part in the impugned judgement and confines his prayer with regard to modification in the sentence part only. He submits that the petitioner has undergone more than 1 year and 4 months out of the total sentence of 2 years and is presently on parole upto 3.8.2020. Learned counsel submits that keeping in custody period undergone by the petitioner, the sentence awarded to the petitioner may kindly be reduced to the one already undergone by him.

On the other hand, learned counsel appearing for respondent No.1-complainant has opposed the prayer and contended that the sentence awarded by the trial Court is proportionate to the guilt of the convict. He submits that there is no mitigating circumstances to reduce the sentence. According to him, the appellate Court has also maintained the sentence and therefore, no interference is warranted in the revisional jurisdiction.

Learned counsel for the State has invited the attention of the Court to the custody certificate to contend that other cases are also pending against the under petitioner under Section 138 Negotiable Instruments Act, 1881.

After hearing learned counsel for the parties, this Court finds that ends of justice would be equally met if the sentence awarded to the convict is reduced to the period already undergone by him. As per custody certificate, the petitioner has served a period of 1 year 4 months and 20 days.

Resultantly, the judgment of conviction dated 25.11.2014, passed by the Sub Divisional Judicial Magistrate, Abohar in case criminal complaint No.45-2 of 20.1.2012 convicting the petitioner under Section 138 Negotiable Instruments Act, 1881 and upheld by the Appellate Court in Criminal Appeal No.499 of 24.12.2014 vide order dated 29.8.2018, is affirmed. However, the sentence awarded by the trial Court is modified to the period already undergone by the petitioner. However, the fine part imposed on the petitioner shall remain intact, failing which, he has to undergo the default sentence.

The petitioner is stated to be on parole till 3.8.2020. He be set at liberty, if his custody is not required in connection with any other case.

Revision petition is disposed off.

July 31, 2020
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No