

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-1831-2019(O&M)
Date of decision : 22.11.2021

Karamjeet Singh

... Petitioner

Versus

Punjab National Bank and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Jaswinder Singh Grewal, Advocate
for the petitioner.

None for respondent no.1.

Mr.N.K.Banka, DAG, Punjab
for respondent no.2-State.

VIKAS BAHL, J.(ORAL)

Challenge in the present petition is to the judgment dated 28.10.2015 vide which the Judicial Magistrate Ist Class, Abohar, had convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (in short 'N.I.Act') and sentenced the petitioner to undergo simple imprisonment for two years and to pay fine of Rs.2000/- and in default of payment of fine, the petitioner was ordered to further undergo simple imprisonment for 15 days. Challenge is also to the judgment dated 18.07.2019 passed by the Additional Sessions Judge, Fazilka, vide which the appeal filed by the petitioner against the said judgment of conviction and sentence, has also been dismissed and the conviction and sentence

Brief facts of the case are that a complaint under Section 138 N.I.Act was filed by the respondent-Punjab National Bank against the present petitioner-accused on the allegations that the respondent bank had sanctioned a sum of Rs.1,50,000/- by way of term loan and a sum of Rs.4,00,000/- by way of agriculture cash credit facility to the petitioner, which was disbursed to the petitioner-convict. It was further the case of the respondent-bank that the petitioner in discharge of the said liability had issued cheque no.536661 dated 05.12.2013 for Rs.1,50,000/- drawn on Punjab National Bank, Branch Khuian Sarwar, in favour of the respondent-bank, which was presented for the purpose of encashment but the said cheque was dishonoured due to “insufficient funds” in the account of the petitioner and was returned unpaid vide memo dated 12.12.2013 with the remarks “insufficient funds”. After dishonouring of the cheque, the respondent bank had served legal notice on 18.12.2013 upon the petitioner-accused and since no money was paid thereafter also, thus, the complaint was filed.

In preliminary evidence, the complainant examined one witness, i.e. CW-1 Jagdish Chander Dhingra, Manager, who had produced the original cheque Ex.C1, memo Ex.C2, legal notice Ex.C3, postal receipt Ex.C4, acknowledgement Ex.C5, copy of loan application Ex.C6, copy of hypothecation agreement Ex.C7, copy of balance and security confirmation letter Ex.C8, copy of statement of loan account of accused Ex.C9 and copy of power of attorney Ex.C10. After hearing arguments on preliminary evidence of the complainant, the Judicial Magistrate Ist Class, Abohar, had summoned the petitioner to face trial. On appearance of the petitioner, notice under Section 138 of N.I.Act was served upon him, to which he

pleaded not guilty and claimed trial. During trial, on 28.05.2015 the petitioner made a statement that he is ready to make the payment of the entire cheque amount on the next date of hearing, failing which his statement be treated as a confessional statement and he will not claim any defence. The petitioner had failed to make payment of the cheque amount despite availing four effective opportunities. Relying upon the statement suffered by the accused/Petitioner on 28.05.2015 to the effect that the same be considered as his admission as well as confession qua the legal liability of the cheque in dispute, the trial Court convicted the petitioner under Section 138 N.I.Act and sentenced him as has been detailed hereinabove. The Additional Sessions Judge, Fazilka, after considering the submissions made by the parties and the admission/confessional statement suffered by the Petitioner before the Trial Court, upheld the conviction and sentence of the petitioner.

Aggrieved against the above said judgments and order of sentence, the present revision petition has been filed.

On 04.09.2019 when the case came up for hearing, a co-ordinate Bench of this Court was pleased to pass the following order:-

“Learned counsel for the petitioner contends that the petitioner is interested in and ready for clearing the loan availed by him from the complainant- Bank. However, for that purpose, the petitioner would need to come out of custody and also needs some time to arrange for funds.

Notice of motion for 06.11.2019.

In the meantime, as an interim measure, it is ordered that the sentence imposed upon the petitioner shall remain suspended till the next date of hearing. Let the petitioner be released on interim bail on his

furnishing bail bonds/sureties to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate.”

Thereafter, on 02.03.2020, a co-ordinate Bench of this Court had passed the following order:-

“Counsel for the petitioner states that the petitioner has since deposited a sum of Rs.80,000/- with respondent No.1-Bank.

Counsel for respondent No.1 seeks some time to get necessary instructions from its client in that regard. Allowed.

The petitioner is directed to continue depositing the amounts with the complainant in terms of the undertaking given in the Court.

List on 17.04.2020.”

On 17.09.2021, this Court had passed the following order:-

“Learned counsel for the petitioner submits that the petitioner has deposited the entire amount with the bank. No one is present on behalf of the bank.

Adjourned to 22.11.2021.

Interim order to continue.”

Today, learned counsel for the petitioner has submitted that he has deposited the entire amount of Rs.1,50,000/- which was the cheque amount, regarding which the present complaint under Section 138 N.I.Act has been instituted. In proof of the same, a receipt from the Punjab National Bank has been presented before this Court, which is taken on record as 'Mark A' (collectively). From the said receipt, it is apparent that the petitioner has paid the entire amount of Rs.1,50,000/- which was the cheque amount, as has also been stated by learned counsel for the petitioner before this Court. Learned counsel for the petitioner has also submitted that the

After 02.03.2020, the matter was adjourned to 17.04.2020 by this Court. On that date, nobody had appeared for the complainant and thereafter, on the next date of hearing also, i.e. 17.09.2021, none put in an appearance for the complainant and even today nobody has appeared for the complainant. The said fact affirms the fact that the complainant has received the cheque amount of Rs.1,50,000/-.

During the course of arguments, learned counsel for the petitioner has submitted that he is not challenging the conviction of the petitioner but is praying for leniency as far as the sentence which has been awarded to the petitioner is concerned and with respect to the same, it has been submitted that the cheque in question is of the year 2013 and the petitioner has suffered the agony of trial/appeal/revision for all these years and the petitioner was granted the concession of bail/suspension of sentence but has never misused the said concession. It is further submitted that petitioner is 67 years of age and is the sole bread winner of his family. It is further submitted that as per the custody certificate (which is taken on record), the petitioner has already undergone 1 month and 20 days of actual custody after conviction. It is further submitted that the petitioner is not involved in any other case. It is further submitted that the petitioner has now even paid the cheque amount of Rs.1,50,000/-.

In support of his arguments, learned counsel for the petitioner has relied upon a judgment of a Co-ordinate Bench of this Court passed in ***CRR No.3844 of 2013***, titled as “***Yadwinder Singh vs. Sunil Gumber***” dated 09.12.2013

As has been observed above, although learned counsel for the complainant had appeared on 02.03.2020 but none has put in an appearance

thereafter before this Court.

Learned State counsel, on the other hand, has submitted that the present case is a case under Section 138 N.I.Act and as per him, both the judgments and orders are well reasoned and thus, the present petition deserves to be dismissed.

This Court has heard learned counsel for the parties and perused the paperbook.

As far as the conviction under Section 138 N.I.Act is concerned, this Court is of the view that both the Courts have considered the statement suffered by the Petitioner/convict before the Trial Court on 28.05.2015 admitting his legal liability and further stating that in case he (petitioner/convict) failed to make the payment, no defence will be claimed by him and the same be treated as a confessional statement and despite availing four effective opportunities, the Petitioner failed to make the payment before the lower Court and thus, in view of the same, the Courts have rightly convicted the petitioner under Section 138 N.I.Act.

On the aspect of a lenient view to be taken with respect to the sentence awarded to the petitioner/convict, a Co-ordinate Bench of this Court in a judgment passed in **CRR No.3844** of 2013, titled as “**Yadwinder Singh vs. Sunil Gumber**” dated 09.12.2013 has held as under :-

“ *This judgment shall dispose of the abovementioned revision petitions, which have been filed against the judgment dated 23.10.2013, passed by the learned Additional Sessions Judge, Sri Muktsar Sahib, dismissing the appeals filed by the petitioner against the judgment /order dated 3.2.2012, passed by the learned Chief Judicial Magistrate, Sri Muktsar Sahib, convicting the petitioner under Section 138 of the Negotiable*

Instruments Act and sentencing RI for a period of two years and to pay a fine of L 5,000/-; in default of payment of fine to further undergo RI for one month.

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7. Learned counsel for the petitioner at the very outset states that he does not want to challenge the judgment of the conviction on merits. The petitioner is young man of 35 years of age and not a previous convict. He is the only bread earner of the family. He is having two children. He further submits that the petitioner has paid the entire amount, therefore, a lenient view may be taken in the matter of sentence. The petitioner has already undergone for a period of one months.

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13. Consequently, the conviction of the petitioner, as mentioned above, is maintained. However, the sentence of imprisonment is reduced to the period already undergone by the petitioner, in all cases.

14. The revision petitions stand partly allowed accordingly.”

As far as sentence which has been awarded to the petitioner is concerned, this Court is of the view that keeping in view the fact that the incident in the present case is of the year 2013 and the petitioner has never misused the concession of bail/suspension of sentence granted to him and the petitioner is not involved in any other case and is also 67 years of age and is the sole bread winner of his family and as per the custody certificate, he has already undergone a period of 1 month and 20 days and also in view of the judgment of Co-ordinate Bench of this Court, and also in view of the fact that the petitioner has paid the cheque amount of Rs.1,50,000/- to the complainant-bank, it is ordered that the sentence awarded to the petitioner is

Accordingly, the present criminal revision petition is disposed of in the abovesaid terms.

Since the main case has been decided, pending miscellaneous application(s), if any, is disposed of in view of the same.

(VIKAS BAHL)
JUDGE

November 22, 2021
Davinder Kumar

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