

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

249

CRR-192-2022 (O&M)
Date of decision: 05.12.2022

AVTAR SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Kulbir Singh Sekhon, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

Mr. B.S. Aulakh, Advocate
for the complainant.

AMAN CHAUDHARY. J.

Present revision petition has been filed challenging the judgment of conviction and order of sentence dated 08.07.2019 passed by Judicial Magistrate Ist Class, Sri Muktsar Sahib whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act, and was sentenced to undergo rigorous imprisonment for a period of 01 year with fine of Rs.100 and judgment dated 03.12.2021 passed by the Additional Sessions Judge, Sri Muktsar Sahib dismissing the preferred filed by the petitioner.

Briefly put, the complainant was carrying on the business of Commission Agency at New Grain Market, Sri Muktsar Sahib under the name and style as M/s. Balwant Singh & Sons and the complainant was the sole proprietor of the said firm. The accused-petitioner used to visit the shop of the

complainant for the purpose of selling his crops and for taking loan as and when required from time to time from the complainant. The accused-petitioner visited the shop of the complainant on 27.05.2017 and settled his account with the complainant firm and an amount of Rs.7,74,000/- was found due and outstanding against the accused till 27.05.2017 and on the asking of the accused, an entry to this effect was also made in the account books of the complainant, who signed the same after admitting it to be correct. In order to discharge of above said legal liability, the accused-petitioner issued one post-dated cheque in favour of the complainant. The complainant presented the above said cheque for encashment in his account but the same was returned unpaid to the complainant as dishonoured with the remarks "Insufficient Funds". As such, the above said cheque issued by the accused stands dishonored. After the receipt of intimation regarding bouncing of the cheque, the complainant got served a statutory registered legal notice upon the accused calling upon the accused to make the payment of cheque within 15 days from receipt of the notice, but, the accused did not make the payment of the cheque.

Thereafter, complainant led preliminary evidence and examined himself as CW1 and closed his preliminary evidence.

On the basis of preliminary evidence led by the complainant, the accused- petitioner Avtar Singh was summoned to face trial under section 138 of Negotiable Instruments Act vide order dated 01.11.2017.

On finding prima-facie case, notice under Section 138 of Negotiable Instruments Act was made upon the accused, to which he pleaded not guilty and claimed trial. In his statement recorded under Section 313 Cr.P.C., the accused pleaded his innocence as well as false implication. Accused opted to lead defence

evidence, but later on, he closed his evidence without examining any witness. The learned trial Court, by the impugned judgment convicted and sentenced the appellants/accused for the offence mentioned above.

Being aggrieved, the petitioner preferred an appeal for setting aside the judgment of conviction and order of sentence, which was dismissed by the lower Appellate Court.

Hence, the present revision petition.

Learned counsel for the petitioner at the outset submits that he does not challenge the conviction awarded to the petitioner by the Judicial Magistrate Ist Class, Sri Muktsar Sahib vide judgment dated 08.07.2019, as affirmed by the learned Additional Sessions Judge, vide judgment dated 03.12.2021, whereby the petitioner was convicted and sentenced to 01 year rigorous imprisonment in a complaint filed under Section 138 of the Negotiable Instruments Act. He further submits that the petitioner has undergone 09 months and 28 days out of 01 year of sentence awarded to him and despite he having been granted interim bail by this Court vide order dated 23.05.2022, he had not availed of the same. He therefore prays that the sentence be modified to the period already undergone, in view of the fact that he is a poor person and is the sole bread winner of the family consisting of old parents, wife and small children, who have no one to look after.

Opposing, the learned counsel for the State submits that the learned Courts below after appreciating every aspect of the matter have rightly convicted and sentenced the petitioner, therefore, he prays for the dismissal of the present petition.

Heard.

Though, the petitioner has given up his challenge to the conviction

and has prayed for reduction of his sentence as having been undergone, in view of the mitigating circumstances that he is a poor person and is the sole bread winner of the family consisting of old parents, wife and small children, who have no one to look after, however, still this Court deems it appropriate to examine the judgments of the Courts below. The learned trial Court had thoroughly examined the evidence and observed that the prosecution has proved its case beyond reasonable doubt against the petitioner by finding that the plea taken by the accused-petitioner is not tenable that the alleged cheque is false, fabricated and forged documents as the accused-petitioner has failed to explain that he has any dealings or concern with the complainant or how the cheque of the accused-petitioner came in the possession of the complainant and how his signature came on the cheque in question. The trial court further recorded that from indirect admission of his cheque and signatures, it is clear that accused-petitioner has taken loans from the complainant. All the technical requirements under Section 138 of the NI Act have been fulfilled by the complainant and further the complainant had explained that the cheque was issued for a valid consideration as to discharge a legally enforceable debt and the accused has failed to rebut the presumption of Section 139 of the NI Act. The learned Additional Sessions Judge, in appeal filed by the petitioner had also considered all aspects of the matter and only thereafter, upheld the judgment of the conviction passed by the learned Trial Court and observed that the story produced by the accused is not reliable. As per the cross-examination of complainant, there is no single suggestion put by the accused regarding the blank signed cheque given to him. The petitioner had failed to bring on record that he had made any complaint to the Police authority regarding committing of fraud. Accordingly, both the Courts below after having

scrutinized the evidence on record have rightly convicted the petitioner and there is no scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioner is affirmed.

Regarding the prayer of the learned counsel for the petitioner that in view of the aforestated mitigating circumstances, the sentence of the petitioner may be reduced to the period already undergone, it is apposite to make a reference to the judgment of Hon'ble The Supreme Court of India in the case of **Haripada Das vs. State of W.B.** (1998) 9 SCC 678, Hon'ble The Supreme Court of India wherein it was held as under:

“....considering the fact that the respondent had already undergone detention for some period and the case is pending for a pretty long time for which he had suffered both financial hardship and mental agony and also considering the fact that he had been released on bail as far back as on 17-1-1986, we feel that the ends of justice will be met in the facts of the case if the sentence is reduced to the period already undergone....”

The observations as relevant to the present case, made by Hon'ble The Supreme Court in the case of **R.Soundarajan vs. Seed Inspector, Coimbatore and another**, 2006(4) RCR (CrI.) 645 read thus:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment."

It is settled proposition of law that each case is to be decided on its own peculiar facts and circumstances.

Keeping in view the mitigating circumstances as brought out by the learned counsel for the petitioner in the present case, inasmuch as the petitioner has already undergone 09 months and 28 days out of 01 year of sentence awarded to him; he is a poor person and is the sole bread winner of the family consisting of old parents, wife and small children, who have no one to look after, the ends of justice would adequately be met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him as he has also faced the pangs of protracted trial for the last about 5 years.

Accordingly, while upholding the conviction of the petitioner in the criminal revision petition, the sentence is ordered to be reduced to the period already undergone by petitioner. Fine shall remain intact.

With the above modification in the order of sentence dated 08.07.2019 passed by Judicial Magistrate Ist Class, Sri Muktsar Sahib, as noted above, the criminal revision petition is partly allowed.

(AMAN CHAUDHARY)
JUDGE

December 05, 2022

S.Sharma(syr)

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