

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(214)

CRR-479-2020 (O&M)

Date of decision: - 22.02.2022

Gurminder Bir Singh

...Petitioner

Versus

Bhushan Kumar

....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sandeep Arora, Advocate, for the petitioner.

Mr. Jagjit Singh Sarao, Advocate
for the respondent.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a revision petition challenging the judgment and order of sentence dated 07.09.2017, vide which the Judicial Magistrate 1st Class, Patiala, had convicted the petitioner on a complaint filed by the respondent/complainant under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') read with Section 420 of IPC and sentenced the petitioner as under: -

<i>Name of the convict</i>	<i>Convicted under Section</i>	<i>Sentence</i>
<i>Gurminder Bir Singh</i>	<i>138 of the Negotiable Instruments Act, 1881</i>	<i>Compensation equivalent the cheque amount + SI of six months in default of compensation.</i>

Challenge is also to the order dated 20.01.2020, vide which, the appeal filed by the petitioner in the Court of Additional Sessions

Judge, Patiala, has also been dismissed and the sentence has been upheld.

Brief facts of the case are that the respondent had filed a complaint under Section 138 of the NI Act read with Section 420 of IPC on the allegations that the petitioner was in need of money and had demanded Rs.10 lakhs from him. On 15.11.2014, the said amount of Rs.10 lakhs was advanced by the respondent to the petitioner and in respect of that, two cheques dated 15.12.2014 and 16.12.2014 of Rs.5 lakhs each, were issued by the complainant in favour of the petitioner in the presence of Harpreet Singh and Deepak Aggarwal (Municipal Councillor) from his account. The said cheques were dishonoured by the banker of accused vide memo dated 12.03.2015 and thereafter, a legal notice dated 07.04.2015 was given and since the petitioner had failed to make the payment, a complaint under Section 138 of the NI Act read with Section 420 IPC was filed.

The complainant himself appeared in the witness box as CW1 and reiterated the entire version given in the complaint and also produced on record the original cheques Ex.C1 and Ex.C2, original bank memo dated 12.03.2015 Ex.C3 and Ex.C4, original postal receipt Ex.C5, legal notice Ex.C6 and bank account statement Ex.C7 and various other documents.

CW2 Ravinder Singh, Assistant (SBI) had produced on record the statement Ex.CW2/B and cheque return register Ex.CW2/A.

In defence, the petitioner had examined DW1 Joginder Singh and DW2 Gurbinder Singh, who deposed through their respective affidavits.

After considering the entire version and documents on record, the Judicial Magistrate 1st Class, Patiala had convicted the petitioner under Section 138 of the NI Act and sentenced him as stated hereinabove. Thereafter, the Additional Sessions Judge, Patiala, after reconsidering the entire evidence and documents on record, had dismissed the appeal filed by the petitioner.

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 cheques in question are of the year 2014 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 50 years of age and is the sole bread winner of his family. It is further submitted that the petitioner has three minor children to take care of and even his wife is not alive. It is also submitted that in the present case, the matter has been compromised the matter and the entire cheque amount i.e. Rs.10 lakhs has already been paid to the complainant. Reference has also been made to the compromise dated 07.02.2022, which has been sent in the Whatsapp group. The said compromise is taken on record and has been marked as 'A'. It is further submitted that the petitioner has already been undergone almost 54 days of actual custody and in the present case, the petitioner had only been sentenced to pay the compensation equivalent to the cheque amount and

in case of default of the same, simple imprisonment of six months was to be undergone and since the said amount has already been paid, thus, it is submitted that the sentence of the petitioner be reduced to the period already undergone.

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.

Learned counsel for the respondent/complainant has reiterated the fact that the matter has been compromised and he has no objection in case the sentenced of the petitioner is reduced to the period already undergone by him.

Learned State counsel, on the other hand, has submitted that the present case is a case under Section 138 NI Act and as per him, both the impugned orders are well reasoned and thus, the present revision 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 fact that there was a legally enforceable debt and the cheques that were issued by the petitioner to discharge the same were dishonoured vide memo dated 12.03.2015 and were returned by the Bank on the pretext of insufficient funds. The legal notice dated 07.04.2015 was also sent in spite of which the accused had failed to make the payment of the amount

of two cheques of Rs.5 lakhs each and thereafter, a complaint under Section 138 of the NI Act read Section 420 IPC was filed. The allegations made in the complaint under Section 138 of the NI Act were fully supported by CW1, who was the complainant as well as CW-2 Ravinder Singh, Assistant (SBI) and the said CW1 had proved on record original cheques Ex.C1 and Ex.C2, original bank memo dated 12.03.2015 Ex.C3 and Ex.C4, original postal receipt Ex.C5, legal notice Ex.C6 and bank account statement Ex.C7 and various other documents. CW2 had brought on record the account statement Ex.CW2/B and cheque return register Ex.CW2/A and the said documents of evidence fully prove that the petitioner is guilty of the offence under Section 138 of the NI Act and thus, the conviction of the petitioner under Section 138 of the NI Act is upheld.

On the aspect that a lenient view 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 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 2014 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 50 years of age and is the sole bread winner of his family and has three minor children, who have lost their mother, to take care of and the fact that the petitioner has compromised the matter with the complainant and has already paid an amount of Rs.10 lakhs to the complainant, which is the amount of the compensation he was liable to pay as per the sentence and counsel for the respondent/complainant has also reiterated the said fact that the compromise has been effected and money has already been paid and nothing is due to the respondent anymore and the petitioner is also stated to have already undergone 54 days of actual sentence, when in fact he was sentenced to pay the compensation equivalent to the cheques'

amount and to undergo simple imprisonment of six months in default of payment of the said compensation, thus, the sentence awarded to the petitioner is reduced to the period already undergone by him.

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.

February 22, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No