

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**Date of decision: 06.07.2022
CRR-582-2020 (O&M)**

DHARAMPAL SAINI

....Petitioner(s)

Versus

JASVINDER SINGH

...Respondent(s)

CRR-700-2020 (O&M)

DHARAMPAL SAINI

....Petitioner(s)

Versus

JASVINDER SINGH

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Madan Lal Saini, Advocate
for the petitioner.

Ms. Guneet Babbar, Advocate
for respondent.

VINOD S. BHARDWAJ. J. (ORAL)

This common order shall dispose of two criminal revision petitions bearing CRR-582-2020 and CRR-700-2020 as both the petitions arise between the same parties. Learned counsel representing the respective parties also have no objection to the matter being decided by a common order.

For the facility of reference, the facts have been noticed from CRR-700-2020. The respective revision petitions arise from the judgment dated 23.02.2017 passed by the Judicial Magistrate First Class, Rupnagar convicting and sentencing the petitioner and also the judgment dated 22.01.2020 passed by the Additional Sessions Judge, Rupnagar, whereby the appeal preferred by the

petitioner was dismissed. Briefly the facts of the case are summarized to the effect that the petitioner-Dharampal Saini was prosecuted for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The complaint in question had been instituted by the respondent-complainant who is claimed to be doing business in the name and style of M/s Lyallpur TVS Motor, Ropar whereas the petitioner-accused was running business in the name and style of Saini Motor & Enterprise, Nurpur Bedi. It was alleged in the said complaint that the petitioner-accused had friendly and cordial relations with the complainant and that the petitioner-accused was the absolute owner and in exclusive possession of land measuring 11 marlas situated in village Asmanpur as per the sale deed dated 17.03.2008. The petitioner-accused is stated to have approached the complainant on 25.10.2008 to avail a loan of Rs.10 lakhs to raise construction over the said land. The said amount was to be returned up to 31.01.2009 along with interest at the rate of 18% per annum. In discharge of the liability as aforesaid, the petitioner is alleged to have issued two cheques for a denomination of Rs.5 lakhs each bearing cheque Nos.100460 and 100467 from his account No.055300005000017 held in ICICI bank and also execute a receipt in respect thereto. Upon the petitioner failing to return the amount as agreed upon, the cheques in question were presented to the bank but the same were returned unpaid by the banker with remarks of "funds insufficient". Complaint bearing No.1885 of 2013 from which CRR-700-2020 arises pertains to cheque No.100460, while CRR-582-2020 arises on account of dishonour of cheque No. 100467. The parties led their respective evidence and upon conclusion of the same, the trial Court, vide its judgment dated 23.02.2017 convicted the petitioner herein and while passing the order on quantum of sentence, the sentence of 1 year awarded in the said complaint viz. COMA-1885

of 2013 was ordered to run concurrent to the sentence awarded in the second complaint viz. COMA-1884 of 2013. The relevant extract of the order dated 27.02.2017 directing the sentence to run concurrently is extracted as under:-

As already held above, the accused in this case took a loan from the complainant which he failed to repay and the cheque issued by him towards payment of the said loan was also dishonoured by his bank for want of sufficient funds in his account. The accused failed to pay the cheque amount even after service of legal notice. In this way, the accused dragged the complainant into uncalled litigation which is pending for the last about 7 years. The miseries of the complainant can be well judged from the fact that apart from losing his amount advanced by way of loan to the accused, he is pursuing the present case for the last 7 years and incurring huge expenses. Thus, in my considered view, the accused does not deserve the benefit of being released on probation as such a measure would frustrate the legislature intention of providing for punishment for dis-honour of the cheque as the object behind incorporating the said penal provision is to ensure that the instrument once issued by the drawer is duly honoured so as to upkeep and maintain the faith of the society and the business community. Accordingly, I hereby sentence the accused to undergo simple imprisonment for a period of one year. However, it is to be seen that another complaint between the same parties for dishonour of cheque of Rs. 5 lac issued in the course of same transaction by the accused has been disposed off by me vide separate judgment today wherein also the accused has been convicted and sentenced to undergo imprisonment for a period of 1 year. The said complaint was ordered to be disposed together with the instant complaint vide order dated 23.09.2016 passed by the Court of learned CJM, Rupnagar. As the cheques were issued in the same transaction,

*I deem it fit order to that sentences in both these complaints shall run concurrently. Reliance is placed on **VK Bansal Vs. State of Haryana 2013(3) RCR (Civil) 1052** wherein the Hon'ble Apex Court held that legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrowers towards repayment of a loan to the creditor.*

Learned counsel appearing on behalf of the petitioner has submitted that he does not intend to press the present petitions on merit inasmuch as the petitioner has already undergone an actual sentence of more than 10 months during the pendency of these two revision petitions and wants to confine his prayer in the present petitions only to the quantum of sentence. He further prays that he is ready and willing to deposit the amount of compensation as awarded by the Courts below within a period of two weeks from today and that the sentence of 01 year, so awarded to him, may be reduced to the period of sentence already undergone by him.

The aforesaid submission advanced by the counsel for the petitioner is not opposed to by the counsel appearing on behalf of the respondent-complainant and she reiterates that in the event the compensation as awarded by the Courts below is deposited within the period as undertaken by the petitioner, she has no objection to the sentence being reduced to the period already undergone.

With the consent of the parties, the present revision petitions are partly allowed. While maintaining the conviction of the petitioner in the above said revision petitions, the sentence awarded to the petitioner is reduced to the

period already undergone subject to the petitioner depositing the amount of compensation as awarded by the Courts below within a period of two weeks from today.

Needless to mention that in case the amount of compensation, so awarded, is not deposited within the period so undertaken by the counsel appearing on behalf of the petitioner today in the Court, the present revision petitions shall be deemed to be dismissed and the petitioner shall have to surrender back to undergo the remaining part of the sentence so awarded by the Courts below.

The revision petitions are accordingly disposed of in terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

July 06, 2022

S.Sharma(syr)

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