

2023:PHHC:063677

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR-534-2023 (O&M)

Date of Decision: May 03, 2023

Naresh Kumar

.... Petitioner

Versus

M/s IndusInd Bank Limited.

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Tanvir S. Grewal, Advocate,
for Mr. Jitender Kumar Sehrawat, Advocate,
for the petitioner.

Mr. G.S. Brar, Advocate,
for the respondent.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Vivek Puri, J.

1. The petitioner has assailed the judgments of the Courts below vide which he has been convicted and sentenced for committing the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. Custody certificate has been filed in Court today, is taken on record.

3. The respondent has instituted a complaint under Section 138 of the Act against the petitioner on account of dishonor of cheque bearing No. 23764, dated 11.04.2017 in the sum of Rs. 40,786/- drawn on Axis Bank Ltd. The

cheque on presentation was dishonoured and the petitioner failed to pay the amount despite issuance of legal notice.

4. The learned trial Court had convicted the petitioner under Section 138 of the Act and sentenced to undergo simple imprisonment for a period of 3 months in terms of the judgment dated 28.11.2019. The petitioner had preferred an appeal against the judgment of conviction and order of sentence and the same has been dismissed vide judgment dated 15.02.2023 passed by the Court of learned Additional Sessions Judge, Hisar.

5. The petitioner has assailed the aforesaid judgments by way of present revision.

6. At the very outset, learned counsel for the petitioner contends that he does not assail the findings of the conviction as recorded by the Courts below and restrict his prayer only to the extent that leniency may be extended to the petitioner in the matter of sentence.

7. Learned counsel for the respondent has submitted that the petitioner has failed to repay the amount and as such, no justified ground is made out to interfere in the findings recorded by the Courts below with regard to the sentence imposed upon the petitioner.

8. The perusal of the records indicate that the petitioner had issued a cheque in the sum of Rs. 40,786/- and the same has been dishonoured. The respondent has

examined its attorney Sandeep Kumar, PW-1, who had testified with regard to the allegations against the petitioner on oath and had also proved on record the relevant documents including the general power of attorney, original cheque, cheque return memo, legal notice, postal receipt, statement of account and loan agreement. The petitioner has raised a defence plea to the effect that he had issued a blank signed cheque as a security, at the time of raising loan for two-wheeler. The entire amount has been repaid along with interest in 24 installments of Rs. 2000/- per month and the cheque in question is for excessive amount.

9. It is significant to note that no error can be found in the findings of the Courts below to the effect that there is a lack of material to indicate that the cheque was issued as a security or the petitioner had repaid the entire loan amount. Consequently, it has to be concluded that the findings of the conviction have been recorded on the basis of the sufficient and reliable evidence on record.

10. With regard to the quantum of sentence, it may be mentioned here that the custody certificate indicates that the petitioner has undergone actual custody for a period of 02 months and 18 days out of substantive sentence of imprisonment of 3 months imposed upon him. The custody certificate does not indicate about any criminal antecedents of the petitioner. As such, merely because the petitioner has

not paid any amount out of the cheque amount may not be termed to be a sufficient and reasonable ground to decline interference with regard to the sentence imposed upon him.

11. Keeping in view the entire circumstances emerging in the instant case, no illegality or irregularity is made out in the judgments of the Courts below as far as the conviction of the petitioner under Section 138 of the Act has been recorded. However, the sentence imposed upon the petitioner is reduced to the sentence already undergone.

12. With the aforesaid partial modification in the quantum of sentence, the present revision is disposed of. As the present revision petition has been disposed of, all the pending Misc. applications, if any, stands disposed of.

May 03, 2023
vk

(Vivek Puri)
Judge

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