

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2332-2008 (O&M)
Date of decision: 20.09.2023

Boota Singh
Versus
...Petitioner

M/s Sunder Mal Sat Pal Commission Agents and another
...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.MS Bhullar, Advocate for the petitioner
Mr.PS Brar, Advocate for respondent No.1
Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY, J.

1. The present revision petition has been filed by the petitioner, challenging the judgment dated 22.09.2008, passed by the learned Additional Sessions Judge, Muktsar, dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 19.02.2008, rendered by the learned Chief Judicial Magistrate, Muktsar, vide which the accused-petitioner had been convicted and sentenced as under:

Offence u/s	Imprisonment	Fine	In default of payment of fine
138 NI Act	RI for 1 year	Rs.10,000/-	RI for 3 months

2. Succinctly, the facts of case are that complainant-respondent-firm was dealing in the business of Commission Agent, to whom the

petitioner owed a huge amount and for discharging it, he issued a cheque bearing No.288741 dated 02.01.2004, amounting to Rs.1,50,000/-. On presentation of which, the same was returned unpaid by the bank with the remarks “insufficient funds”. Thereafter, the accused failed to make good the payment to the complainant, despite having been served a legal notice of demand. Consequently, the present complaint was filed.

3. A notice of accusation was served upon him, to which he pleaded not guilty and claimed trial. To prove its case, the complainant examined CW1-Jagsir Singh, CW2-Jagjit Singh, CW3-Ravi Bansal and tendered certain documents.

4. The statement of the accused was recorded under Section 313 Cr.P.C. where incriminating evidence was put to him, which he refuted and pleaded false implication. In defence, he examined DW1-Harbans Singh.

5. On scrutinizing the evidence led by the parties, the trial Court convicted and sentenced the petitioner as noticed above. Being aggrieved, he filed an appeal, which was dismissed by the learned Additional Sessions Judge, Sirsa vide judgment dated 22.09.2008.

6. Challenge to the aforesaid judgments has been made in the present revision petition.

7. Learned counsel for the petitioner, at the very outset, gives up his challenge to his conviction, however, prays for modification of the order of his sentence awarded to the period as already undergone on account of the facts that the matter stands compromised and the settled for an amount of Rs.1,45,000/- that has been paid to the complainant; he belongs to the poor strata of the society; is the sole breadwinner of his family having old aged parents, and children; has undergone about 2 months of imprisonment;

is facing the agony of trial since 2004 and is a first offender.

8. Learned counsel appearing for respondent No.1-complainant affirms the aforesaid fact of settlement as also the receipt of the amount and has no objection to the prayer made.

9. On the other hand, learned State counsel submits that both the Courts below after appreciating the evidence led by the prosecution, have rightly convicted and sentenced the petitioners, therefore, prays for the dismissal of the present revision petition.

10. Heard the learned counsel and perused the file.

11. 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 as mentioned above. 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 cheque was issued by the accused to discharge his liability, which was presented within the prescribed period. It was dishonoured due to insufficient funds in the account of the petitioner. To rebut the presumption under Section 139 NI Act, the accused-petitioner could not produce any cogent evidence. Thus, he was rightly convicted under Section 138 NI Act and the Additional Sessions Judge had also while deciding the appeal considered all aspects of the matter and only thereafter, upheld the judgment of the conviction. Having gone through the record, this Court does not find any scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioner is affirmed.

12. 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 judgments in **Santosh Kumar Singh vs. Brijesh Kumar**, Criminal Appeal No. 235 of 2019 decided on 08.02.2019, wherein the cheque amounting to Rs.14,40,000/- got dishonoured, the trial Court convicted the accused for RI 6 months, Hon'ble The Supreme Court while considering the settlement arrived at between the parties, reduced the sentence to the period already undergone i.e. 53 days. Further in **Raju @ Sheikha Mohamed Sharif vs. State of Maharashtra and another** (2011) 3 SCC (Cri) 402, the accused has already paid the due amount and has faced the rigours of criminal prosecution for the past six years, Hon'ble The Supreme Court reduced his sentence to the period already undergone i.e. 39 days out of the total sentence of six months.

13. Hon'ble The Supreme Court in **M/s. Spacemakers and Another vs. M/s Mansi Trading Co.**, 2018(5) RCR (Criminal) 402, while considering the fact of the accused having paid the entire cheque amount, this Court reduced his sentence to the period already undergone by him i.e. 42 days out of 1 year.

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

15. During pendency of the present petition, the matter was resolved between the parties before the Mediation and Conciliation Centre of this Court, a report dated 21/26.04.2023 in that regard reads thus:

“During the course of mediation the parties agreed to compromise the matter and the petitioner agreed to pay an amount of Rs. 1,45,000/- towards the settlement cost. The said amount has now already been paid and an

affidavit was sworn in by Ravi Bansal on behalf of Respondent No.1 regarding the compromise and receipt of the amount. It has also been mentioned that he does not want to take any further legal action against the petitioner. Copy of the said affidavit dated 22.03.2023 is attached. Though a formal settlement deed could not be return before the mediation centre. The matter stands settled between the parties.”

16. Keeping in view the aforesaid as also the mitigating circumstances, as brought out by the learned counsel for the petitioner in the present case and the fact that the petitioner, who is a first offender, has faced the ordeal of a prolonged trial, this Court finds that the ends of justice would be adequately met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him.

17. With the aforesaid modification in the order of sentence dated 19.02.2008, the criminal revision petition is partly allowed.

20.09.2023
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No