

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

229.

CRR No.592 of 2015 (O&M)
Date of Decision:08.11.2023

Jagdish Chaudhary

... Petitioner

Versus

Oriental Bank of Commerce and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gagandeep Sandhir, Advocate
for the petitioner.

Mr. Raj Kumar, Advocate
for respondent No.1.

Mr. IPS Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The present revision petition has been filed by the petitioner against the judgment dated 30.01.2015 passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 25.03.2013 passed by the learned Judicial Magistrate 1st Class, Mukerian vide which the petitioner was held guilty for commission of offence under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the NI Act) and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹1500/- and in default of payment of fine, further to undergo rigorous imprisonment for a period of two months.

2. In brief the facts are that a criminal complaint was filed under Section 138 of the NI Act by the complainant-Tarsem Singh, Branch Manager of Bank of Oriental Bank of Commerce, Branch Talwara against the petitioner alleging

therein that in the year 2004, the petitioner along with Ram Kumar son of Babu Ram approached the respondent No.1 Bank/complainant for grant of housing loan for a sum of ₹10 lakhs and submitted a written proposal dated 11.09.2004. The respondent No.1-Bank on consideration of the proposal of the petitioner, sanctioned a loan of ₹10 lakhs to him. In consideration of the said loan, the petitioner had executed various documents along with agreement to repay the loan amount with agreed rate of interest. Further, an account was opened in the name of the petitioner and he availed the loan facilities to the maximum. However, he defaulted in making payment of monthly instalments and in order to discharge his debt liability in part, he issued post dated cheque No.592331 dated 27.10.2008 for a sum of ₹3,50,000/- drawn on Punjab National Bank, Talwara Township with an assurance that the same would be encashed on presentation. Respondent No.1-Bank under the *bona fide* belief, presented the cheque for encashment, however, the same was dishonoured with remarks 'referred to drawer' vide bank memo dated 14.01.2009. The petitioner was approached by the respondent No.1-Bank to pay the amount of cheque but he did not pay any heed. Demand notice dated 20.01.2009 was issued to the petitioner under Section 138 of the NI Act but the petitioner did not pay the said amount.

3. On presentation of the complaint, respondent No.1-Bank/complainant examined Tarsem Singh, Branch Manager as CW1 and proved on record Ex.C1 to Ex.C8. After going through the documents placed on record by the complainant, the petitioner-accused was ordered to be summoned for commission of offence under Section 138 of the NI Act. As *prima facie* case was made out against the petitioner and he was served with notice under Section 138 of the NI Act to which he pleaded not guilty and claimed trial.

4. In support of its case, the complainant-Bank examined two witnesses and closed its evidence. Statement of the petitioner-accused was recorded under Section 313 Cr.P.C. in which all the incriminating evidence was put to him, however, he denied the version of the complainant-Bank. In defence, the petitioner examined DW1 Darshan Singh, Manager of the complainant-Bank and closed his evidence.

5. After hearing arguments of both the sides and perusing the evidence on record, the trial Court convicted and sentenced the petitioner as stated above.

6. Learned counsel appearing for the petitioner contends that the petitioner is not assailing the impugned judgment of conviction dated 25.03.2013 passed by the learned Judicial Magistrate 1st Class, Mukerian, which stood upheld by the learned learned Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur on merits and restrict his prayer for modification of the order of sentence dated 25.03.2023 on quantum of sentence to that of the sentence already undergone by the petitioner, keeping in view the fact that the complainant was filed in the year 2009/2010 and the petitioner is suffering agony of protracted trial since then. It is also contended that petitioner has actually undergone custody of 4 months 12 days, out of total sentence of 1 year.

8. Per contra, learned counsel appearing for respondent No.1-Bank opposes the prayer for modification of the order of sentence to that of already undergone on the ground that the learned trial Court has passed a well reasoned judgment based on correct appreciation of evidence available on record, which stood upheld by the Appellate Court.

9. Learned State counsel has not disputed the fact that the petitioner has already undergone actual custody of 4 months 12 days out of total sentence of 1 year.

10. I have heard learned counsel for the parties and perused the record of the case with their able assistance. The complaint was registered in the year 2009/2010 and therefore, the petitioner has been suffering the agony of trial from last more than 12 years as the appeal/revision is also continuation of trial, therefore, he prays that the order of sentence be modified to that of already undergone.

11. A two Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Dhool Singh (2004) 12 SCC 546*** speaking through Justice N. Santosh Hegde, has held as under:-

“18. Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its mind while imposing sentence.”

A two Judge Bench of the Hon'ble Supreme Court in ***Ajmer Singh Vs. State of Punjab (2005) 6 SCC 633*** has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period

already undergone, it should categorically notice and state the period actually undergone by the accused.”

12. A two Judge Bench of the Hon’ble Supreme Court in ***Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926***, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to antisocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

13. In ***Deo Narain Mandal v. State of UP (2004) 7 SCC 257***, a three Judge bench of the Hon’ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it

come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

14. A perusal of the *ratio decidendi* culled out in the above-mentioned judgments of the Hon'ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformatory.

15. As per the custody certificate produced by the learned State counsel, the petitioner has actually undergone the period of 4 months 12 days out of total sentence of 1 year.

16. A perusal of the judgment of conviction passed by the trial court and upheld in appeal by the Appellate Court indicates no perversity in the findings of the trial court and the same are based on correct appreciation of evidence available on record. Since learned counsel for the petitioner has not assailed the judgment of conviction on merit, this Court is of the opinion that it would be in the interest of justice if sentence of rigorous imprisonment for 1 year imposed upon the petitioner is reduced to the period already undergone by him.

17. In view of the aforesaid facts and circumstances, the judgment of conviction dated 25.03.2013 passed by the learned Judicial Magistrate 1st Class, Mukerian convicting the petitioner, which stood upheld by the Appellate Court in

appeal, is upheld, however, order of sentence dated 25.03.2013 is modified and the sentence of simple imprisonment for 1 year imposed upon petitioner is reduced to the period of sentence already undergone by him. However, the sentence of fine imposed upon the petitioner by the trial Court is kept intact and he is directed to deposit the amount of fine, if not already paid, in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and made to undergo RI for one month.

- 18. Consequently, the instant revision petition is disposed of in above terms.
- 19. Pending miscellaneous application(s), if any, shall also stand disposed of.
- 20. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

November 08, 2023
Pankaj*

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