

CRR-1817 of 2022 (O&M)

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

CRR-1817 of 2022 (O&M)

Reserved on: 07.02.2023

Date of Pronouncement: 20.02.2023

Sukhdev Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. A.S. Sekhon, Advocate, for the petitioner.

Mr. Jashanpreet Singh, DAG, Punjab.

Mr. Ravish Bansal, Advocate, for respondent No.2.

NAMIT KUMAR, J.

This revision petition has been filed under Section 401 Cr.P.C. against the judgment dated 12.07.2022 passed by the Court of learned Additional Sessions Judge-I, Faridkot, as well as the judgment of conviction and order of sentence dated 06.07.2017 passed by the Court of learned Judicial Magistrate First Class, Faridkot, whereby petitioner has been held guilty and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.2,000/- under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the NI Act') and in default of payment of fine to further undergo rigorous imprisonment for one month. Out of fine amount of Rs.2,000/-, Rs.1500/- has been ordered to be given as compensation to the complainant under Section 357(3) Cr.P.C.

CRR-1817 of 2022 (O&M)

Brief facts of the case are that petitioner-Sukhdev Singh had friendly relations with the family of respondent No.2-complainant and he borrowed a sum of Rs.2 lac in cash from respondent No.2-Lalita and on demand of respondent No.2, petitioner in discharge of his legal liability issued a cheque bearing no.053302 dated 22-01-2016 for a sum of Rs.2 lac payable at Axis Bank Ltd, Branch Faridkot from his bank account no.911010012645057. Thereafter, respondent No.2 presented the said cheque in her bank at Punjab National Bank Branch Faridkot Cantt on 29-02-2016, for encashment, but the bank of petitioner did not honour the cheque and returned the original cheque along with its bank memo dated 29-02-2016 with remarks "Account closed". Respondent No.2-complainant thus served a registered legal notice through her counsel on 2.3.2016 at his correct and last known address. The notice was duly served upon the petitioner but he did not repay the amount. So, complainant filed complaint against the petitioner.

After consideration of preliminary evidence, petitioner was summoned to face trial under Section 138 of the NI Act. After hearing learned counsel for the parties and on appraisal of evidence, petitioner was convicted and sentenced by the Court of learned Judicial Magistrate First Class, Faridkot, as above under Section 138 of the NI Act vide judgment of conviction and order of sentence dated 06.07.2017. Relevant extract from the judgment of conviction of the trial Court dated 06.07.2017 reads as under: -

"16. From the evidence which has been led by the complainant it has been duly established on record the accused issued the cheque Ex. C1 in order to discharge his

CRR-1817 of 2022 (O&M)

legal liability and the same when presented in the bank by the complainant was returned unpaid on account of Account closed. The cheque was returned unpaid due to reasons of account closed vide memo Ex.C2. The statutory legal notice Ex C3 was issued by the complainant to the accused however the accused did not make the payment of the due amount. Thereafter, the complainant filed the complaint within the stipulated period. Till date the accused has not made the payment of the cheque amount. Therefore, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act and as such the point of determination is answered in affirmative in favour of the complainant and against the accused.

CONCLUSION

17. In sequel to above findings this court is constrained to hold that the complainant has been able to establish his case beyond the shadows of reasonable doubts as set up in the complaint. The accused is held guilty for having committed offence punishable under Section 138 of the Negotiable Instruments Act and accordingly is hereby convicted for the notice of accusation framed against him. Let the convict be taken into custody and he be heard on the question of sentence.”

Aggrieved against the judgment of conviction and order of sentence of the trial Court, petitioner preferred appeal before the appellate Court, which has also been dismissed vide impugned judgment dated 12.07.2022 by the Court of learned Additional Sessions Judge-I, Faridkot by recording following findings: -

“18. Faced with the paucity of the evidence on behalf of the accused and relying upon the testimony on behalf of the complainant having been led to establish the guilt

CRR-1817 of 2022 (O&M)

against the accused, it is ascertainable that the learned trial Court has rightly passed the verdict against the accused. The story of the complainant is worthy of credence and was rightly accepted by the learned Trial Court. The version as set up by the complainant is remarkable for its clarity and consistency and testimony on his behalf has stood well the test of cross-examination. The testimony on behalf of the complainant is free from infirmity of any material nature. The version having been set up by the accused on his behalf in the proceedings before the learned trial Court is not only frail in nature, but also does not inspire confidence. So, the contentions on behalf of the accused are manifestly fallacious and untenable and plea on behalf of the accused is unconvincing and without any substance. Thus, the analytical appraisal of entire material and evidence on record itself leads towards the inescapable inference that the verdict passed by the learned trial Court against the accused is based upon sound foundation. After weighing the entire evidence on record in the scale of judicial scrutiny, I find that the appeal having been preferred by the appellant-accused is without any substance and the same is hereby dismissed. The record of learned trial Court be returned along with copy of this judgment. Appeal file be consigned to the record room.”

Learned counsel for the petitioner contended that both the Courts below have not appreciated the fact that cheque book was missing and the petitioner had got registered complaint dated 18.10.2014 in the police station and after a lapse of two years, respondent No.2 misused the said missing blank cheque. He further submitted that the petitioner is suffering from glaucoma since long and

CRR-1817 of 2022 (O&M)

the sentence awarded to the petitioner may be reduced to already undergone as he has already undergone sentence for about seven months out of total sentence of one year.

Learned State counsel has placed on record custody certificate which is taken on record.

Learned counsel for respondent No.2 contend that the petitioner has taken two different stands, as while examining himself at the time of notice of accusation, petitioner has taken defence that cheque in question was not issued by him to respondent No.2-complainant rather the same was given in the form of security, which has been misused by her and at the time of recording of statement under Section 313 Cr.P.C., he has taken the defence that he lost his signed cheque book and cheque in question is from his lost cheque book and has been misused by respondent No.2-complainant. They further submitted that petitioner has never disputed his signatures on the cheque in question, therefore, the Courts below have rightly convicted and sentenced the petitioner.

I have heard learned counsel for the parties and perused the record.

This Court while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the judgments of both the Courts below.

CRR-1817 of 2022 (O&M)

Perusal of judgments of the Courts below would show that petitioner has taken two contradictory stands, firstly that cheque in question was given to respondent No.2-complainant in the form of security and secondly, that the cheque in question was misused by respondent No.2-complainant after she found his lost cheque book. However, he has not denied his signatures on the cheque in question. Further, the petitioner could not prove on record that his cheque book containing the cheque in question was lost and the said cheque has been misused by respondent No.2. Therefore, the petitioner has rightly been convicted and sentenced by the Courts below.

However, after going the medical record of the petitioner (Annexure R-1) that he is suffering from glaucoma and is having 90% disability of both the eyes; the fact that he has suffered agony of trial for a long period and has undergone actual sentence for a period of about seven months out of total sentence of one year as the petitioner is in custody since 12.07.2022, taking a lenient view, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him about seven months.

In ***R. Soundarajan v. Seed Inspector, Coimbatore and another"*** reported as 2006(4) R.C.R. (Criminal) 645 the Hon'ble Supreme Court held as as under:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if

CRR-1817 of 2022 (O&M)

the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment."

Similarly in the case of ***Umrao Singh v. State of Haryana***, 1981 AIR (SC) 1723 the Apex Court has observed as under:-

"After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.

3. The appeal is disposed of accordingly."

In the case of ***Sahab Singh vs. State of Haryana*** 2019(3) RCR (CrL) 727 by following the judgment of the Hon'ble Supreme Court in ***State of Punjab vs. Saurabh Bakshi*** 2015 (2) RCR

CRR-1817 of 2022 (O&M)

(Criminal) 495, this Court while upholding the conviction of the petitioner therein has reduced the sentence of the petitioner by observing as under:-

*“However, the prayer of the learned counsel for reduction of the substantive sentence of the petitioner to six months in view of the Hon’ble Supreme Court’s judgment in **Saurabh Bakshi’s** case, merits acceptance. It may be noticed that as per the custody certificate produced on record, the petitioner has already undergone 7 months and 9 days out of the total sentence of two years imposed upon him.*

*The Hon’ble Supreme Court in **Saurabh Bakshi’s** case (supra), while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. one year to the period already undergone by him i.e. 24, days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-*

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse

CRR-1817 of 2022 (O&M)

than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

Adverting to the facts of the present case and keeping in view the mitigating circumstances noted above, this Court is of the considered view and has no hesitation to conclude 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.

In view of the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned, the conviction of the petitioner in the criminal revision petition is upheld.

However, the sentence is ordered to be reduced to the period already

CRR-1817 of 2022 (O&M)

ordered by the Courts below. The same would, however, be subject to deposit of costs of Rs.10,000/- by the petitioner with the Bar Clerks Association, Punjab and Haryana High Court, Chandigarh, within a period of one month from today. It is made clear that in case the aforesaid amount of Rs.10,000/- is not deposited within the stipulated period, then the present revision petition would be deemed to have been dismissed.

Impugned judgment of conviction stands affirmed with above modification. The sentence of fine however, shall stand maintained as ordered by the Courts below and if not so deposited the same shall be paid within four weeks from the date of passing of this order.

Disposed of. Pending application(s), if any, stand disposed of in view of the aforesaid judgment.

20.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No