

106 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-51-2020 (O&M)

Date of Decision: 20.12.2023

LACHHMAN SINGH

...Petitioner

V/S

INDUSIND BANK LTD. AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.K.S. Phoolka, Advocate
for the petitioner.

Mr. A.S. Virk, Advocate for the respondent No. 1.

Mr. I.P.S. Sabharwal, DAG Punjab
for respondent No. 2.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition has been filed by the petitioner against the judgment dated 03.12.2019 passed by the learned Additional Sessions Judge, Bathinda affirming the judgment of conviction and order of sentence dated 03.12.2018 passed by the learned Judicial Magistrate 1st Class, Bathinda vide which the petitioner has been held guilty for commission of offence punishable under Section 138 of Negotiable Instruments Act and awarded rigorous imprisonment for a period of 01 year and to pay compensation to the complainant bank to the tune of Rs. 77,800/- along with interest @ 9% per annum.

2. Brief facts of the complaint are that the complainant is body corporate under the banking companies Act 40 of 1980 having its head office at Bathinda and branch office among other places at Bathinda. The complainant was officer of the complainant bank and was also well conversant with the facts of the present case and was also competent and

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authorized to carry on all legal proceedings of the present case being the principal officer. It is averred that accused/petitioner took a loan from the complainant bank to the tune of Rs.2,20,000/- for purchase of product TATA ACE Magic bearing Registration No.PB-03U-2589 vide contract agreement No. JH004006H dated 30.06.2009 and agreed to pay a sum of Rs.82,775/- as interest charges on the said amount and agreed to pay the total amount of Rs.03,02,775/- to the complainant bank in monthly installments. The accused did not repay the loan amount regularly rather his account became irregular and a sum of Rs.2,82,000/- was still due and outstanding against the accused. The accused/petitioner in discharge of his partial lawful liability issued cheque No.857241 dated 10.06.2014 of Rs.77,800/- in favour of the complainant bank out of his account maintained with Oriental Bank of Commerce, Court Complex, Bathinda with the assurance that the same shall be honoured as and when presented for encashment. It is further averred that said cheque was presented for encashment but the same was returned dishonoured with remarks 'Funds Insufficient' vide memo dated 11.06.2014 by the banker of the accused to the banker of complainant. Thereafter, complainant got issued a legal notice dated 30.06.2014 upon the accused through counsel intimating the accused about the dishonour of said cheque and calling upon the accused to make the payment of the said dishonoured cheque amount to the complainant within the period of 15 days from, the date of receipt of the notice but complainant failed to make the payment of the cheque in question.

3. In order to prove its case, the complainant was examined and he reiterated the contents of the complaint as well as evidence of

complainant. Statements of the accused/petitioner under Section 313 Cr.P.C. was recorded in which all the incriminating evidence was put to him to which he pleaded false implication and claimed innocence.

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

7. Learned counsel appearing for the petitioner contends that the petitioner is not assailing the impugned judgment of conviction dated 03.12.2018 passed by the learned Judicial Magistrate 1st Class, Bathinda which stood upheld by the learned Additional Sessions Judge, Bathinda on merits and restrict his prayer for modification of the order of sentence dated 03.12.2018 on quantum of sentence to that of the sentence already undergone by the petitioner, keeping in view the fact that the petitioner is suffering agony of protracted trial from 2014. It is also contended that petitioner has not been involved in any other criminal case during the course of trial or post conviction.

8. Per contra, learned counsel for the respondent opposes the prayer of the petitioner 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. However, he does not dispute the fact that no other case is pending against the petitioner. The custody certificate dated 19.12.2023 submitted by the learned State counsel is taken on record.

9. I have heard learned counsel for the parties and perused the record of the case with their able assistance. The complaint in question was lodged on the allegation of petitioner/accused not being able to discharge

his liability and dishonouring of cheque. It is submitted by the counsel

for the petitioner that the complaint in question was registered in the year 2014 and the petitioner has been suffering the agony of trial from last about 09 years as the appeals are also continuation of trial, therefore, he prays that the order of sentence be modified to that of already undergone.

10. 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.”

11. 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 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."

12. 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.

13. 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 reformative.

14. As per the custody certificate dated 19.12.2023 produced by the learned State counsel, the petitioner herein has actually undergone the period of 03 months and 05 days out of total sentence of 01 year.

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15. A perusal of the judgment of conviction passed by the trial court and upheld in appeal by the 1st 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.

16. The complaint in the present case was lodged on 28.07.2014 and the petitioner has suffered the agony of trial for about 09 years. After his conviction, he has grown into law abiding citizen with a desire to live a normal and peaceful life as no criminal is pending against them. Out of total sentence of 1 year awarded to the petitioner, he has actually undergone a period of 03 months and 05 days. Since learned counsel for the petitioner has not assailed the judgment of conviction on merits and the petitioner-accused is living in harmony and peacefully as law abiding citizens, this Court is of the opinion that it would be in the interest of justice if total sentence of rigorous imprisonment for 1 year awarded to the petitioner is reduced to the period already undergone by him. Resultantly, the petitioner be released from the custody with immediate effect, if not involved/wanted in any other case.

17. In view of the aforesaid facts and circumstances, the judgment of conviction dated 03.12.2018 passed by the learned Judicial Magistrate 1st Class, Bathinda convicting the petitioner, which stood upheld by the 1st Appellate Court in appeal, is upheld, however, order of sentence dated 03.12.2018 is modified and the total sentence of rigorous imprisonment for 1 year imposed upon petitioner is reduced to the period of sentence already undergone by him. However, the compensation to be paid to the complainant bank to the tune of Rs. 77,800/- along with interest @ 9% per annum is kept intact.

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.

20.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No