

CRR-2940-2023

Date of Decision: December 21, 2023

Lakhwinder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Gurpal Singh Sandhu, Advocate
for the petitioner

Mr. I.P.S. Sabhawal, DAG, Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 09.02.2023 passed by learned Sessions Judge, Fazilka vide which judgment of conviction and order of quantum of sentence dated 09.11.2022 passed by Judicial Magistrate Ist Class, Abohar, Fazilka in Criminal Complaint CIS no. NACT/832/2017 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter ‘NI Act’) was upheld. The petitioner was sentenced as under:-

Offence	Sentence
Section 138 of the NI Act	Simple imprisonment of 1 year

The petitioner was also ordered to pay compensation to the tune of the cheque amount i.e. Rs. 48,500/- as envisaged in Section 357(3) of the Cr.P.C, in default of payment of which, the petitioner was ordered to undergo further simple imprisonment of three months.

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FACTUAL BACKGROUND

2. Briefly, the facts are that to discharge his liability, the petitioner issued a cheque no. 170474 dated 07.05.2019 for Rs. 48,500/- which was dishonoured on presentation for encashment vide memo dated 09.05.2019 with the remarks- 'funds insufficient .' Thereafter a legal notice dated 17.05.2019 was served upon the petitioner. However, the petitioner failed to make the requisite payment and the present complaint was filed.

3. After appreciating the evidence on record, the petitioner was convicted by the learned trial Court vide judgment dated 09.11.2022. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 09.02.2023.

CONTENTIONS

4. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 09.11.2022 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner as has already undergone a period of 2 months 4 days of custody. Furthermore, no other case is pending against him.

5. Learned counsel for the petitioner further submits that petitioner is 35 years of age. He has reformed and intend to live his life as a law-abiding citizen.

6. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower Appellate Court, as such, he does not deserve any

leniency.

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ANALYSIS AND OBSERVATIONS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

8. 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. 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.

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9. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under:-

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	18/10/2023 to 21/12/2023	2 months 4 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	18/10/2023 to 21/12/2023	2 months 4 days
5.	Actual undergone period	18/10/2023 to 21/12/2023	2 months 4 days
6.	Earned remission	-	-
7.	Total sentence including remission	18/10/2023 to 21/12/2023	2 months 4 days

10. A perusal of the judgment of conviction passed by the learned trial Court and the learned Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

11. The complaint in the present case was instituted on 15.06.2019. Since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision. As per his custody certificate, there are no other criminal cases pending against him. Out of the total sentence awarded of 1 year, he has undergone actual sentence of 2 months and 4 days. Accordingly, this Court is

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of the opinion that it would be in the interest of justice, if the sentence of simple imprisonment of 1 year awarded to the petitioner is reduced to the period already undergone by him.

12. Consequently, judgment dated 09.02.2023 passed by the Additional Sessions Judge, Fazilka confirming the conviction of the petitioner is upheld, however, the order of sentence dated 09.11.2022 is modified to the extent that the sentence of simple imprisonment for 1 year awarded to the petitioner is reduced to the period of sentence already undergone by him.

13. In view of the above discussion, the present petition is partially allowed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

21.12.2023
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>