

OM PARKASH

.....Petitioner

Versus

BIRBAL

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.P. Sharma, Advocate
for the petitioner

Mr. Aditya Sanghi, Advocate
for the respondent

HARPREET SINGH BRAR, J. (ORAL)

1. This instant appeal has been preferred against the impugned judgment of conviction dated 22.12.2007 and order of sentence dated 24.12.2007 passed by learned Judicial Magistrate Ist Class, Narnaul in criminal complaint No.6 dated 08.02.2007 filed under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as NI Act) as well as the impugned judgement dated 20.12.2008 passed by learned Additional Sessions Judge, Narnaul, whereby, the appeal of the petitioner was dismissed.

The petitioner were sentenced as under:-

Under Section	Sentence
S.138 NI Act	<i>S.I of 1 year with a fine of Rs.2,000/-. In case of default in payment of fine, further S.I of 2 months.</i>

FACTUAL BACKGROUND

2. Briefly, the facts are that petitioner in discharge of his legal liability, issued a cheque for Rs.1,03,000/- in favour of the respondent-

complainant which was dishonoured vide memo dated 08.01.2007. The petitioner failed to make the necessary payment despite the demand notice served upon him by the respondent. Aggrieved, the respondent filed the complaint (supra) against the petitioner.

3. The learned trial Court upon considering the preliminary evidence, summoned the petitioner-accused to face trial for commission of offence under Section 138 of NI Act vide order dated 08.02.2007. On the appearance of the petitioner, notice of accusation was served upon him on 15.02.2007 to which he pleaded not guilty and claimed trial.

4. Ultimately, the learned trial Court after appreciating the evidence on record, convicted the petitioner for commission of offence under Section 138 of NI Act and sentenced him to undergo simple imprisonment for 1 year. Aggrieved by the judgement of conviction, the petitioner filed an appeal before the learned Additional Sessions Judge, Narnaul which was dismissed on being devoid of any merit. Hence, the petitioner has approached this Court by way of the present petition.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 22.12.2007 on merits and restricts his prayer to modification of the order of quantum of sentence dated 24.12.2007 to that of the sentence already undergone by the petitioner. It is further submitted that the sentence awarded to the petitioner was suspended on 03.03.2009 by this Court but the petitioner has not been involved in any other criminal case since then and is living his life as a law-abiding citizen.

6. *Per contra*, learned counsel for the respondent opposes the prayer of the petitioner and submits that the learned trial Court has passed a well-

reasoned judgment based on correct appreciation of evidence available on record, as such, he does not deserve any leniency.

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 of the Hon'ble Supreme Court 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 reformative.

9. As per the custody certificate of the petitioner, his custody is tabulated as under:-

Petitioner – Om Parkash (Suspension of Sentence granted on 03.03.2009)

Sr No.	Particulars	Period	Duration
1.	Custody under trial	0	0 days
2.	Custody after conviction	20.12.2008 to 05.03.2009	2 months 16 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	2 months 16 days
5.	Actual undergone period	-	2 months 16 days
6.	Earned remission	-	-
7.	Total sentence including remission	-	2 months 16 days

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

CONCLUSION

11. The complaint (supra) in the present case was instituted on 08.02.2007 and the petitioner has been facing protracted trial for about 17 years. Out of the total sentence of 2 years awarded to the petitioner, he has undergone 2 months and 16 days of custody. Although, there is another case

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under Section 138 NI Act pending against the petitioner but he has been granted bail in the same. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of simple imprisonment awarded to the petitioner is reduced to the period of custody already undergone by him.

12. Consequently, the present revision is disposed of in the following terms:-

- i The conviction of the petitioner is upheld, however, the sentence awarded to them is modified to the period of sentence already undergone by him.
- ii The fine of Rs.2,000/- imposed upon the petitioner is increased to Rs.10,000/-. The petitioner is directed to deposit the same before the learned trial Court within one month from the date of receipt of certified copy of this order, failing which, this order shall be liable to variance.

13. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

04.03.2024
Ajay Goswami

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