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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No. 846 of 2008(O&M)
Date of Decision: 13.03.2024

Lakhbir Singh

.....Petitioner

Versus

Amarjit Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manveen Pheruman, Advocate for
Mr. D.S. Pheruman, Advocate
for the petitioner

Mr. Sandeep Singh, DAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 26.04.2008 passed by learned Additional Sessions Judge, Amritsar whereby the judgment of conviction and order of sentence dated 11.04.2007 passed by learned Judicial Magistrate 1st Class, Amritsar in complaint case No. 539 of 13.06.2001/21.03.2006 under Section 138 of the Negotiable Instruments Act, 1881 registered at Police Station Ramdas, Amritsar has been upheld. The petitioner was sentenced as under:-

Offence under Section	Sentence
138 of the Negotiable Instruments Act	RI for 1 ½ years and fine of Rs. 5000/-, in default of which RI for 1 month

FACTUAL BACKGROUND

2. Briefly, the facts are that the complainant and the petitioner were the

friends and they have the close confidence with each other. The petitioner was running a business of commission agent for which the petitioner borrowed the money from the complainant to attract the customers and to invest the same in the business. The complainant collected the amount from the various resources and paid the amount to the petitioner to the tune of Rs. 15,05,000/- on the different dates and the petitioner has promised to pay the interest on the said amount at the rate of 2 % per month. The petitioner gave the cheque to the complainant for an amount of Rs. 15 lacs and he paid the cash amount of Rs. 5000/- to the complainant. The complainant presented the cheque and the same was bounced because of "insufficient funds".

3. On assessing the material available on record, the learned trial Court vide judgment and dated 11.04.2007 convicted and sentenced the petitioner-accused as mentioned above. Aggrieved by the judgment of conviction, the petitioner-accused preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 26.04.2008.

CONTENTIONS

4. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 11.04.2007 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by petitioner as Lakhbir Singh has already undergone a period of about 01 month of custody. He further submits that since his conviction, he has not been involved in any other criminal activity.

5. 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 and as such, he does not deserve any leniency.

OBSERVATIONS AND ANALYSIS

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

7. 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.

8. A perusal of the judgment of conviction passed by the learned trial

Court and 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 quantum of sentence qua the petitioner.

CONCLUSION

9. The complaint in the present case was instituted on 13.06.2001. The petitioner has been facing protracted proceedings for about 23 years and is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision. Since his conviction, the petitioner has grown into a law-abiding citizens and desire to live a peaceful life. As per his custody certificate, he is not involved in any other case and has undergone about 01 month of custody out of total sentence of 1 ½ years in the instant case.

10. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 1 ½ years awarded to the petitioner is reduced to the period already undergone by him.

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

(i) The judgment dated 26.04.2008 passed by the Additional Sessions Judge, Amritsar confirming the conviction of the petitioner is upheld, however, the order of sentence dated 11.04.2007 is modified to the extent that the sentence of rigorous imprisonment for 1 ½ years along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) The sentence of fine of an amount of Rs. 5000/- imposed upon the petitioner is increased to Rs.10,000/-. The petitioner is directed to deposit the increased amount of fine 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 rigorous imprisonment for one month.

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

(HARPREET SINGH BRAR)
JUDGE

March 13, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No