

250

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1524-2009

Date of decision: 11.03.2024

Ashok

....Petitioner

Versus

Khazan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gautam Dutt, Advocate
for the petitioner

None for the respondent

HARPREET SINGH BRAR, J.

1. The instant revision petition has been preferred against the judgment dated 22.05.2009 passed by learned Additional Sessions Judge, Gurgaon whereby the judgment of conviction dated 15.09.2008 passed by Judicial Magistrate Ist Class, Gurgaon in criminal case no. 79 dated 11.02.2002 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter ‘NI Act’) and Section 420 of the IPC, was upheld. Vide order of sentence dated 17.09.2008, the petitioner was sentenced as under:-

Offence	Sentence
Section138 NI Act	Rigorous imprisonment of 2 years and a fine of Rs. 1000/-, in default of which rigorous imprisonment of 1 month

FACTUAL BACKGROUND

2. The facts, in brief, are that in the month of July, 2001, petitioner-accused borrowed a sum of Rs. 10,00,000/- from the respondent-complainant.

To discharge his liability, the petitioner issued a cheque bearing no. 535765 dated 20.10.2001 for a sum of Rs. 5,00,000/-. The said cheque was dishonoured when presented for encashment on 28.12.2001 with the remarks 'insufficient funds.' The petitioner had issued another cheque bearing no. 535766 dated 07.01.2002 for a sum of Rs. 5,00,000/-, which was also dishonoured on presentation for encashment. Thereafter, a legal notice was served on the petitioner to call upon him to make the payment. Since he failed to make the requisite payment in the stipulated time, the instant complaint was filed.

3. On finding a prima facie case, notice of accusation was served upon the petitioner on 13.04.2003. The complainant examined 4 witnesses to prove its case. All the incriminating evidence was put to the petitioner-accused in his statement recorded under Section 313 of the Cr.P.C. wherein he pleaded false implication and examined 3 witnesses in his defence.

4. After assessing all the material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 15.09.2008. Aggrieved by the same, the petitioner approached the learned lower Appellate Court wherein the appeal was dismissed vide judgment dated 22.05.2009. The sentence of the petitioner was suspended by this Court vide order dated 15.03.2010.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 15.09.2008 on merits and restricts his prayer to modification of the order of quantum of sentence dated 17.09.2008 to that of the sentence already undergone by the petitioner as has already undergone a period of 9 months 26 days of custody.

OBSERVATIONS AND ANALYSIS

6. I have heard learned counsel for the petitioner and perused the paper-book with his 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. 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	22.05.2009 to 17.03.2010	9 months 26 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		9 months 26 days
5.	Actual undergone period		9 months 26 days
6.	Earned remission		3 months 5 days
7.	Total sentence including remission		1 year 1 month 1 day

9. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in their finding 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 only qua quantum of sentence.

CONCLUSION

10. The complaint(*supra*) in the present case was lodged on 11.02.2002 and the petitioner has been suffering the agony of protracted trial since the last 22 years. Since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, he is not involved in any other criminal case and out of the total sentence of 2 years in this case, he has undergone actual sentence of 9 months 26 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 2 years awarded to the petitioner is reduced to the period already undergone by him.

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

- (i) The judgment dated 22.05.2009 passed by learned Additional Sessions Judge, Gurgaon upholding conviction of the petitioner is upheld, however, the order of sentence dated 17.09.2008 is modified to the extent that the sentence of rigorous imprisonment for 2 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. 1000/- imposed upon the petitioner by the trial Court 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.

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

(HARPREET SINGH BRAR)
JUDGE

11.03.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No