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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1441-2012

Date of Decision: 22.02.2024

PARKASH CHAND

...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Samarth Sagar, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present revisions are preferred against the judgment dated 14.03.2012 passed by the learned Additional Sessions Court, Hoshiarpur vide which the appeal against judgment of conviction and order of sentence dated 08.12.2009 passed by the learned Sub Divisional Judicial Magistrate, Dasuya in criminal complaint no. 11 dated 08.05.2007 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'), has been upheld. The petitioner was sentenced as under:

Offence	Sentence
Section 138 of the NI Act	Rigorous Imprisonment for 6 months and a fine of Rs. 1000/-, in default of which Rigorous Imprisonment for 7 days.

2. The facts, in brief, are that in July, 2006, the petitioner-accused purchased feed worth Rs. 60,000/- from respondent no. 2-complainant, who runs a dub agency of selling feed to Poultry Farms under the name and style of Chaudhary Feed. Out of the total sum, the petitioner paid Rs. 10,000/- and

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promised to pay the remaining amount at the time of delivery. To discharge his legal liability, the petitioner issued a cheque bearing no. 009310 dated 02.11.2006 for a sum of Rs. 50,000/-, however, on its presentation for encashment, the same was dishonoured citing “closure of the account” as the reason. Thereafter, a legal notice was served upon the petitioner to call upon him to make the payment. However, since he failed to pay the requisite amount in the stipulated time, the instant complaint was lodged.

3. After assessing the material available on record, the learned trial Court convicted the petitioner vide judgment dated 08.12.2009. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court, which was dismissed vide judgment dated 14.03.2012.

4. Learned counsel for the petitioner submits that he is not assailing the impugned judgment of conviction dated 08.12.2009 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the release of the petitioner on probation in view of his age and good conduct.

5. Learned State counsel does not object to the restricted prayer of the petitioner, so long as the conviction of the petitioner is upheld.

6. Having heard the learned counsels for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is a 77 years old man. The complainant-respondent no. 2 died on 06.05.2010, during the pendency of the appeal before the learned lower Appellate Court and his legal representatives Amardev Singh-respondent no. 3 and Amandeep Singh were brought on record as respondent Nos.2(a) and 2(b). Apparently, a compromise was arrived at, however, Amandeep Singh died on 18/19.02.2015 and Amardev Singh did not show up to endorse the affidavit on

the basis of which settlement was arrived at.

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7. Section 3 and 4 of the Probation of Offenders Act, 1958 empowers the Courts to release the convicts if deemed appropriate in view of circumstances of the case. Similarly, Sections 360 and 361 of the Cr.P.C also allows the Courts to release convicts on probation for good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in **Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

A two Judge Bench of the Hon'ble Supreme Court in **Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

8. In view of the facts and circumstances of the case, the instant revision petition is disposed of in the following terms:

- i. The judgment dated 14.03.2012 passed by the learned Additional Sessions Judge, Hoshiarpur, confirming the conviction of the petitioner is upheld.
- ii. The order of sentence dated 08.12.2009 passed by the learned Sub Divisional Judicial Magistrate, Dasuya is modified to the extent of granting the concession of probation to the petitioner for good conduct for a period of one year.
- iii. The petitioner shall be released on probation for good conduct on furnishing a personal bond in the sum of Rs. 20,000/- with a surety in the like amount, after furnishing an undertaking to keep the peace and good behaviour for the remaining period of his sentence to the satisfaction of the concerned trial court.
- iv. The petitioners shall remain under the supervision of the concerned Probation Officer during the aforesaid period. If the petitioner fails to comply with the said directions or commit breach of the undertaking rendered by him, he shall be called upon to undergo the sentence imposed upon him by the learned trial Court.

February 22, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |