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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1851-2014 (O&M)  
Reserved on: 09.12.2024  
Pronounced on:19.12.2024

SURINDER SINGH  
VS.  
CHANDIGARH SCHEDULED CASTES BACKWATD CLASSES & MINORITIES  
FINANCIAL & DEVELOPMENT CORP LTD .. RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Nakul Sharma, Advocate, for the petitioner.  
Mr. Abhinav Gupta, Addl. P.P. for the respondent.

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ANOOP CHITKARA, J.

|                       |                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Criminal<br>Complaint | No. 287 dated 28.04.2005, under Section 138 read with Section 142 of the Negotiable Instruments Act, District Chandigarh.<br><br>Decided on 07.01.2013 |
| Criminal Appeal       | No. 45 of 2013 in the Court Additional Sessions Judge, District, Chandigarh.<br><br>Decided on 06.06.2014.                                             |

1. The petitioner, who stands convicted for the commission of an offense punishable under Section 138 of the Negotiable Instruments Act, 1881 (NIA), after dismissal of appeal had come up before this Court by filing the present revision petition.
2. The facts are that the petitioner-convict had taken a loan from the respondent/complainant-Chandigarh Schedules Castes, Backward Classes, and Minorities Financial and Development Corporation Ltd, for a sum of Rs. 1 lac under self-employment scheme. In the discharge of the said liability, the petitioner had issued a cheque. When the complainant presented the cheque, it was returned on 02.03.2005 with the memo ‘account closed.’ Faced with this, the complainant issued a legal notice dated 14.03.2005 demanding the payment of the cheque amount. However, despite service, the petitioner failed to repay the amount, which led to filing a criminal complaint under Section 138 of the Negotiable Instruments Act of 1881.
3. The trial Court took preliminary evidence and found it worth taking cognizance and summoning of the accused. Subsequently, a notice of acquisition was put to the petitioner for the commission of an offense punishable under Section 138 of the NI Act. After completion of the complainant’s evidence, the accused did not take any specific

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stand under Section 313 CrPC, 1973, and his answers were denial simpliciter. Vide judgment dated 07.01.2013, the trial Court convicted the petitioner and sentenced him to undergo imprisonment for six months and to pay compensation of Rs. 1 lac.

4. Feeling aggrieved, the petitioner filed a criminal appeal before the Sessions Court, challenging his conviction and sentence. However, vide judgment dated 06.06.2014, the appeal was dismissed.

5. After that, the petitioner came up before this Court by filing the present criminal revision petition under Section 401 CrPC, 1973.

6. When the matter was listed before a Coordinate Bench of this Court on 18.06.2014, the petitioner's counsel submitted that the petitioner is ready to compound the matter with the respondent and has also handed over a draft of Rs. 55,000/- as a payment to the complainant. However, no application seeking compounding of the offense was filed. After that, on 08.09.2014, a Coordinate Bench of this Court passed the following order:-

“Draft No. 860734 dated 16.06.2014 valuing Rs. 55,000/-has been handed over to counsel for the complainant.

To come up on 04.12.2014 for consideration.

In the meantime, the petitioner is ordered to be released on interim bail to the satisfaction of trial Court.”

7. The matter was sent to Mediation. However, it was returned with observations that no settlement is possible.

8. The petitioner's counsel made the following submissions:

1. Loan taken from the complainant Corporation of Rs. 1 lac. Discharged cheque in question of Rs. 55,000/- and the same is dishonoured vide memo dated 02.03.2005 with the remarks 'account closed'.

2. That cheque amount already paid, vide demand draft dated 16.06.2014 and the same has been encashed.

3. That total sentence of six months and out of the same, the petitioner has already undergone 03 months and 06 days of sentence.

4. Out of compensation amount of Rs. 1 lac, Rs. 55,000/- has already been paid. Further perusal of account statement (Annexure P-2), amount of Rs. 91,767/- has been paid.

9. On 09.12.2024, the petitioner's counsel had submitted that he had gone through the evidence and, in his opinion, it would be in the interest of his client if his sentence is reduced and since he was not arguing on merits, this should be considered as an addition factor to reduce the sentence. Even Mr. Abhinav Gupta, Addl. P.P. appeared for the respondent and did not deny that if the petitioner confines his arguments to the reduction



of the sentence, then it would be an additional mitigating factor.

10. I have heard learned counsel for the parties and reviewed the record, and its analysis would lead to the following outcome.

11. When the respondent/complainant is successfully able to demonstrate the existence of a legally and enforceable debt, the issuance of a cheque by the petitioner is dishonor on the ground that the account was closed, the demand of the cheque amount through the issuance of legal notice and launching of the prosecution. I have also gone through the judgment passed by the trial Court, and I do not find any infirmity in the same because the evidence is legally tenable, and I do not find any fault in the conviction.

12. Given above, the judgment passed by the trial Court and affirmed by the Sessions Court do not call for any interference regarding the conviction.

13. However, this Court would consider the sentence reduction on the petitioner's above statement. Per the custody certificate dated 09.12.2024, the petitioner had undergone total custody of 03 months and 06 days out of 06 months. It is also undisputed that out of the compensation amount of Rs. 1 lac, the petitioner had paid a sum of Rs. 55,000/- which is 55% of the compensation amount. Thus, the petitioner had undergone over half of the sentence and paid more than half the compensation amount.

14. When a convict does not challenge his conviction on merits but confines only to sentence reduction, it saves the Court's valuable time scrutinizing the evidence. On the other hand, it also helps the complainant and the prosecution because the conviction is not disturbed, and only sentence reduction is sought, and it would certainly be a mitigating factor.

15. The percentage of the sentence that should be reduced based on such submission needs consideration. However, in the present case, considering that the offense punishable under Section 138 of the NI Act is primarily to recover the cheque amount and cannot be compared with any other criminal activity, it would be just expedient to reduce the sentence already undergone.

16. Counsel for the convict submitted that the petitioner has already served around 03



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months and 06 days of his sentence.

17. Given the above, the present criminal revision petition is partly allowed and sentence of imprisonment awarded to the petitioner is reduced to already undergone. The amount of compensation whatever is deposited shall remain as it is. All pending application(s), if any, stand closed.

**The petition is allowed in the terms mentioned above.**

(ANOOP CHITKARA)  
JUDGE

19.12. 2024  
smriti

Whether speaking/reasoned: Yes  
Whether reportable: Yes