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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2890-2014
Date of Decision: 15.02.2024

Vikas Mehta.....Petitioner

Versus

Hindu Co-operative Bank Ltd.
.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arvind Kashyap, Advocate
for the petitioner

Mr. H.S. Bedi, Advocate
for the respondent

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 10.04.2014 passed by learned Sessions Judge, Pathankot vide which judgment of conviction dated 01.02.2012 passed by Judicial Magistrate Ist Class, Pathankot in criminal complaint no. 157/1 dated 01.04.2010 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter ‘NI Act’)was upheld and the order of quantum of sentence was modified. The petitioner was sentenced as under:-

Offence	Sentence
Section 138 of the NI Act	Rigorous imprisonment of 2 years and a fine of Rs. 5000/-, in default of which rigorous imprisonment of 1 month

FACTUAL BACKGROUND

2. The facts, in brief, are that on 04.01.2008, the petitioner, proprietor of M/s Vikas Trading Company, received a loan of Rs. 50,00,000/- from the respondent-complainant and executed various documents as security. The loan was payable in installments, however the petitioner failed to make regular deposits towards the same. On 06.02.2010, the petitioner issued a cheque bearing no. 231331 dated 06.02.2010 for Rs. 20,00,000/- which was dishonoured on presentation for encashment vide memo dated 08.02.2010 with the remarks 'insufficient funds.' Thereafter, a legal notice dated 20.02.2010 was served upon the petitioner, however, he failed to make the requisite payment and the instant complaint was lodged on 01.04.2010. Notice of accusation was served upon the petitioner to which he pleaded not guilty and claimed trial.

3. The prosecution examined 1 witness- the respondent/complainant to prove its case. All incriminating evidence was put to the petitioner-accused and his statement under Section 313 of the Cr.P.C. was recorded wherein he pleaded false implication and examined 1 witness in his defence.

4. On assessing all material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 01.02.2012. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 10.04.2014. The sentence of the petitioner was suspended by this Court during the pendency of the present petition vide order dated 11.05.2015.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 01.02.2012 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner as has already undergone a period of 9 months 8 days of custody and desires to live his life as a law abiding citizen. Further, the respondent has already mortgaged the property of the petitioner and realised 16 lakhs out of the cheque amount of Rs. 20,00,000/-. An award has also been passed by the Arbitration Tribunal in favour of the respondent regarding the said loan.

6. Per contra, learned counsel for the respondent 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. Moreover, the conduct of the petitioner does not entitle him to any relief as he was declared a Proclaimed Person by the learned Additional Chief Judicial Magistrate, Pathankot.

OBSERVATIONS AND ANALYSIS

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 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.

9. 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	13.08.2014 to 18.05.2015	9 months 8 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	13.08.2014 to 18.05.2015	9 months 8 days

5.	Actual undergone period	13.08.2014 to 18.05.2015	9 months 8 days
6.	Earned remission		1 months 10 days
7.	Total sentence including remission		10 months 18 days

10. A perusal of the judgment of conviction passed by the learned trial Court and the learned lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. 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

11. The complaint (supra) was lodged on 01.04.2010 and the petitioner has already faced the agony of protracted trial for the last about 14 years. Further, the respondent-bank has already initiated other proceedings for recovery of the cheque amount. As per his custody certificate, out of the total sentence of 2 years, he has undergone actual sentence of 9 months 8 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.

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

- (i) The judgment dated 10.04.2014 passed by the learned Sessions Judge, Pathankot confirming the conviction of the petitioner is upheld, however, the order of sentence dated 01.02.2012 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.5000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the 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.

15.02.2024
Neha

(HARPREET SINGH BRAR)
JUDGE

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