

for the brother of the complainant, the complainant approached the petitioner accompanied by *Panchayat* members and in order to discharge his enforceable liability, the petitioner issued a cheque bearing No.801428 dated 13.06.2007, drawn on Central Co-operative Bank, Pakhowal Branch, Ludhiana. When the said cheque was presented for encashment, the same was dishonoured by the bankers on the remarks "Account Closed", vide bank memo dated 05.07.2007. Upon receiving the bank memo, the complainant through his counsel, got issued a legal notice dated 26.07.2007 to the petitioner but despite the receipt of the same, he failed to make the payment of cheque amount within a statutory period. Hence, the present complaint was registered.

3. The petitioner was convicted vide judgement dated 15.04.2015, by the learned trial Court, which has also been upheld by lower Appellate Court vide judgment dated 24.07.2017.

4. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 15.04.2015 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 he has already undergone a total custody period of 01 month and 27 days and is not 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 also been upheld by the learned lower Appellant Court and as such, he does not deserve any leniency.

6. I have heard learned counsel for the parties and perused the record 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 indicates no perversity in its findings and the same is 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.

9. The complaint in the present case was lodged on 27.08.2007 and the petitioner has been suffering the agony of protracted trial since the last 17 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 case and has undergone actual sentence of 01 month and 23 days out of total sentence of 01 year, in the instant case.

10. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence 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 24.07.2017, passed by the learned Additional Sessions Judge, Ludhiana, affirming the judgment of conviction is upheld, however, the order of sentence dated 15.04.2015 is modified to the extent that the sentence of rigorous imprisonment for 01 year, 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.2,000/- 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 a period of 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.

March 14, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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