

Darbara Singh

.....Petitioner

Versus

M/s Ved Parkash Rajesh Kumar Commission Agents and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shubham Tandon, Advocate for
Mr. Navjot Singh, Advocate
for the petitioner

Mr. Rishabh Singla, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 14.11.2018 passed by learned Additional Sessions Judge, Fatehgarh Sahib vide which judgment of conviction and order of sentence dated 20.04.2015 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib in criminal compliant no. 348 dated 16.07.2013 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter ‘NI Act’) was upheld. The petitioner was sentenced as under:-

Offence	Sentence
Section 138 of the NI Act	Rigorous imprisonment of 6 months and compensation of Rs. 1,13,326/- (under Section 357 of the Cr.P.C) payable to the complainant

FACTUAL BACKGROUND

2. The facts, in brief, are that the petitioner was in business with respondent no. 1. In order to discharge his liability, the petitioner issued a

cheque bearing no. 795499 dated 25.04.2013 for Rs. 1,13,326. On presentation for encashment, the said cheque was dishonoured vide memo dated 17.05.2013 with remarks 'insufficient funds.' Thereafter a demand notice dated 15.06.2013 was served upon the petitioner to call upon him to make the payment. However, the petitioner failed to make the requisite payment and the instant complaint was lodged.

3. On finding a prima facie case, notice of accusation was served upon the accused under Section 138 of Negotiable Instruments Act, to which he pleaded not guilty and claimed trial. The complainant examined 3 witnesses to prove its case. All 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, but did not lead any evidence in his defence.

4. On assessing all material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 20.04.2015. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 14.11.2018. The sentence of the petitioner was suspended by this Court during the pendency of the present petition vide order dated 08.01.2019.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 20.04.2015 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 has already undergone a period of 1 month 23 days of custody and is not involved in any other criminal activity.

6. 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 been upheld by the learned lower Appellate Court and as such, he does not deserve any leniency.

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	14.11.2018 to 07.01.2019	1 month 23 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		1 month 23 days
5.	Actual undergone period		1 month 23 days
6.	Earned remission		-
7.	Total sentence including remission		1 month 23 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 compliant in the present case was lodged on 16.07.2013 and the petitioner has been suffering the agony of protracted trial

since the last 11 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 out of the total sentence of 6 months in this case, he has undergone actual sentence of 1 month 23 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 6 months 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 14.11.2018 passed by the learned Additional Sessions Judge, Fatehgarh Sahib confirming the conviction of the petitioner is upheld, however, the order of sentence 20.04.2015 passed by the learned Judicial Magistrate Ist Class, Fatehgarh Sahib is modified to the extent that the sentence of rigorous imprisonment for 6 months awarded to the petitioner is reduced to the period of sentence already undergone by him.
- ii The compensation of Rs. 1,13,326/- awarded under Section 357 of the Cr.P.C, payable to the complainant is upheld.
- iii The petitioner is also directed to deposit an amount of fine of Rs. 10,000/- 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.

(HARPREET SINGH BRAR)
JUDGE

27.02.2024
Ajay Goswami

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