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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2060-2019

Date of Decision: January 25, 2024

HARPAL SINGH

.....Petitioner

Versus

HDFC BANK LTD.

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr.Saurabh Bhardwaj, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 25.07.2019 passed by learned Additional Sessions Judge, Bathinda vide which judgment of conviction and order of sentence dated 04.01.2017 passed by Judicial Magistrate 1st Class, Bathinda in complaint under Section 138 of the Negotiable Instrument Act (hereinafter referred to as the 'NI Act') was upheld. The petitioner was sentenced as under: -

Offence	Sentence
Section 138 NI Act	Rigorous imprisonment for 2 years and a fine of Rs. 5000/, in default of which simple imprisonment for thirty days.

FACTUAL BACKGROUND

2. The facts, in brief, are that the respondent-complainant is a banking company with one of its branches in Bathinda. It was asserted in the complaint that the petitioner-accused had availed KGC of Rs. 15,90,000/- vide ac-

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count no. 01878040003586 and term loan amounting to Rs. 5,00,000/- vide account no. 80178939 from the respondent bank and agreed to repay the same in installments. In discharge of his legal liability, the petitioner issued a cheque bearing no. 159595 dated 31.07.2014 for a sum of Rs. 9,54,000/- drawn on HDFC Bank, in favour of the respondent. Accordingly, the respondent deposited the above said cheque for its encashment. However, vide memo dated 31.07.2014, the above said cheque was returned unpaid with the following remark, "Funds Insufficient". Subsequently, a legal notice dated 11.08.2014 was sent to the petitioner through registered post. In spite of due service of notice, the petitioner failed to pay the cheque amount. The respondent then filed a complaint for proceeding against the petitioner under Section 138 of the NI Act.

3. Notice of accusation was served upon the petitioner by the learned trial Court to which the petitioner pleaded not guilty and claimed trial. The Assistant Manager of the respondent bank appeared as the sole witness and tendered various documents as evidence to substantiate the complaint. Similarly, the petitioner appeared as the sole defence witness and submitted various exhibits as evidence to prove his innocence.

4. On appreciating the evidence and documents available on record, the petitioner was convicted by the learned trial Court vide judgment dated 04.01.2017. Aggrieved by the same, the petitioner preferred an appeal before the Lower Appellate Court, which was dismissed vide judgment dated 25.07.2019.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 04.01.2017 on merits and restricts

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his prayer to modification of the order of quantum of sentence to that of the release of the petitioner on probation of good conduct.

6. Learned counsel for the petitioner further submits that the petitioner has repaid the amount owed in full and thus a lenient view may be taken.

7. 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

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

9. Section 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C. also empower the courts to release the offenders on probation of 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.”

10. It is settled law that the proceedings initiated under Section 138 of the NI Act are quasi-criminal in nature and the object and purpose of this enactment is to provide a compensatory mechanism for expeditious recovery of money as opposed to punishing the accused. A two Judge Bench of the Hon'ble Supreme Court in **R. Vijayan v. Baby (2012) 1 SCC 260** has considered the said issue and come to the conclusion that punishing the offender is secondary concern. Speaking through Justice R.V. Raveendran, the following was observed:-

"15. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant in-

variably receives the amount of the cheque by way of compensation under section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount, (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque. Under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the

cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary."

11. The nature of offence under Section 138 of the NI Act and the purpose of the said Act was examined by a three Judge Bench of the Hon'ble Supreme Court in **P. Mohanraj and others v. Shah Brothers Ispat Private Limited (2021) 6 SCC 258** wherein speaking through Justice R.F. Nariman, it was observed as under:-

"53. A perusal of this judgment in Ishwarlal Bhagwandas [S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190: AIR 1965 SC 1818] would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act."

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12. 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 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. In order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

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

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sel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

14. The complaint in the present case was filed on 16.09.2014. The petitioner has undergone a protracted trial which has lasted for close to a decade now. Further, the petitioner has already repaid the complete amount owed to the respondent bank. In that view of the matter, while maintaining the conviction and sentence imposed on the petitioner, he is ordered to be released on probation of good conduct on furnishing a personal bond of Rs. 25,000/- with a surety of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of two years, to the satisfaction of the concerned trial Court within a period of two weeks. The petitioner shall remain under the supervision of the concerned Probation Officer(s) during the aforesaid period.

15. It is further directed that if the petitioner fails to comply with the said directions or commits breach of the undertaking given by him, he shall be called upon to undergo the sentence imposed upon him by the learned Additional Sessions Judge, Bathinda.

16. The sentence of fine amounting to Rs.5000/- imposed upon the petitioner by the trial Court is increased to Rs.25,000/-. 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.

17. With the aforesaid directions, the instant petition stands disposed of.

January 25, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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