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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-2256-2019

Date of Decision: January 25, 2024

Satnam Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhay K. Sharma, Advocate  
for the petitioner

Mr. Mohit Thakur, AAG Punjab

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HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 14.08.2019 passed by learned Sessions Judge, Hoshiarpur vide which judgment of conviction and the order of sentence dated 29.07.2017 passed by Judicial Magistrate 1 st Class, Hoshiarpur 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 1 year and a fine of Rs. 5000/, in default of which further rigorous imprisonment of one month. |

FACTUAL BACKGROUND

2. The facts, in brief, are that respondent No. 2-complainant being on friendly terms with the petitioner-accused, extended a loan of Rs. 8,00,000/- to the latter so that the petitioner could fulfill some personal domestic needs, which

the petitioner assured to repay as and when demanded by respondent No. 2. In the month of October, 2009 on demand by respondent No. 2 that the loan amount be repaid, the petitioner kept on giving false assurances and promises with no intention to repay the amount. Finally, a cheque bearing No. 000773 dated 23.12.2013 amounting to Rs. 8,00,000/- drawn on Union Bank of India, Branch Rama Mandi, Jalandhar, was issued in favour of respondent No. 2. Accordingly, on 27.12.2013, respondent No. 2 deposited the above said cheque with his bank, Indian Bank, Branch Hoshiarpur for encashment of the same. However, vide memo dated 28.12.2013, the above said cheque was returned unpaid with the remark, "Dormant Account". Subsequently, a legal notice dated 02.01.2014 was sent to the petitioner through registered post. The notice was duly received by the petitioner, but in spite of due service of notice, the petitioner failed to pay the amount. Respondent No. 2 then filed a complaint for proceeding against the petitioner under Section 138 of the NI Act.

3. Upon presentation of the complaint in the trial Court, the petitioner was summoned vide order dated 20.03.2014. Once the presence of the petitioner was secured, notice of accusation under Section 138 of the NI Act was served upon the petitioner on 20.10.2015, to which the petitioner pleaded not guilty and claimed trial. Respondent No. 2 appeared as the sole witness and tendered various documents as evidence to substantiate his claim. In his statement recorded under Section 313 Cr.P.C. the petitioner pleaded false implication, and closed his defence evidence without examining any witness.

4. After examining all the material on record, the petitioner was convicted by the learned trial Court vide judgment dated 29.07.2017. Aggrieved by the same, the petitioner preferred an appeal before the Lower Appellate

Court, which was dismissed vide judgment dated 14.08.2019.

### **CONTENTIONS**

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 29.07.2017 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 the petitioner has already undergone a period of 1 month 17 days in custody.

6. Learned counsel for the petitioner further submits that petitioner has reformed and intend to live his life as a law-abiding citizen.

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, 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. 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.

10. 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               | 19/01/2011 to 07/03/2011 | 1 month 17 days |
| 3.     | Interim bail                           | -                        | -               |
| 4.     | Actual custody period after conviction | 19/01/2011 to 07/03/2011 | 1 month 17 days |
| 5.     | Actual undergone period                | 19/01/2011 to 07/03/2011 | 1 month 17 days |
| 6.     | Earned remission                       | -                        | -               |
| 7.     | Total sentence including remission     | 19/01/2011 to 07/03/2011 | 1 month 17 days |

11. 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. Even 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**

12. The complaint in the present case was filed on 20.01.2014. The petitioner has faced the agony of a protracted trial, which has lasted for approximately 10 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, there are no other criminal cases pending against him. Out of the total sentence of 1 year, he has undergone actual sentence of 1 month and 17 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 1 year awarded to the petitioner is reduced to the period already undergone by him.

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

(i) The judgment dated 14.08.2019 passed by learned Sessions Judge, Hoshiarpur confirming the conviction of the petitioner is upheld, however, the order of sentence dated 29.07.2017 is modified to the extent that the sentence of rigorous imprisonment for 1 year 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 said 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.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

January 25, 2024  
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(HARPREET SINGH BRAR)  
JUDGE

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