

respondent/complainant vide agreement no. HISAR0107130005 dated 14.07.2011, which was payable in monthly installments and petitioner purchased a vehicle Tata LPT-2515 bearing registration No. HR-39/9589 with financed amount. It has been further averred that the petitioner failed to repay this amount to the respondent/complainant in stipulated installments, as such, a sum of ₹8,65,000/-, as on 12.12.2013, was due against the petitioner of respondent-company. The petitioner, in discharge of his pre-existing liability, issued cheque bearing No.060013 dated 13.12.2013 amounting to 8,65,000/- (hereinafter referred to cheque in question) drawn at Axis Ban, Sirsa Branch out of his bank account No.911010033071303. The petitioner assured the respondent that the said cheque shall be honoured by the banker on presentation. The respondent/complainant presented the cheque in question in ICICI Bank Ltd., Sirsa for its encashment and in turn, the banker of respondent/complainant sent the cheque in question to the banker of petitioner for clearance but the banker of petitioner returned the said cheque as unpaid with cheque return memo dated 19.12.2013 with remarks "Account Closed". It seems that at the time of issuance of cheque in question, the petitioner was full and complete knowledge that his account has already been closed, but in spite of that, the petitioner issued the cheque in question to the respondent/complainant. The respondent/complainant got issued a legal notice dated 04.01.2014 through Shri JBL Garg, Advocate, Sirsa under Section 138 of the NI Act, demanding the above said amount but the petitioner did not make the payment of dishonoured cheque to the complainant. Hence, the present complaint.

3. The petitioner was convicted vide judgement dated 06.01.2018, by the learned trial Court, which has also been upheld by lower Appellate Court vide judgment dated 01.09.2023.

4. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 06.01.2018 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 period of 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. Moreover, 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 10.02.2014 and the appellant has been suffering the agony of trial since the last 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, he is not involved in any other case and has undergone actual sentence of 08 months and 16 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 revision is disposed of in the following terms:-

(i) The judgment dated 01.09.2023 passed by the learned Additional Sessions Judge, Sirsa, affirming the judgment of conviction is upheld, however, the order of sentence dated 08.01.2018 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 qua payment of compensation shall remain intact and the respondent-complainant will be at liberty to recover the same in accordance with law.

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

March 15, 2024

manisha

(HARPREET SINGH BRAR)
JUDGE

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