

CRR-2597-2023

Date of Decision: January 30, 2024

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Karamjeet Sharma, Advocate
for the petitioner

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

CRM-47427-2023

The present application has been filed seeking condonation of delay of 320 days in filing the present revision petition.

For the reasons mentioned in the application, same is allowed and delay of 320 days in filing the revision petition is condoned.

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1. This revision has been preferred against the judgment dated 14.09.2022 passed by learned Additional Sessions Judge, Panipat vide which judgment of conviction and order of sentence dated 27.11.2017 and 28.11.2017 respectively, passed by Judicial Magistrate 1st Class, Panipat in complaint filed 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	1 Rigorous imprisonment for 1 year and a fine of Rs. 5000/, in default of which further rigorous imprisonment of one month. 2 Fine of Rs. 75000/- as compensation under

	Section 357 of the Code of Criminal Procedure, 1973.
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FACTUAL BACKGROUND

2. The facts, in brief, are that the petitioner had purchased goods from respondent no. 2-complainant firm and made part payments at regular intervals. A ledger/running account was maintained in the books of account of the respondent no. 2 firm. In October 2014 an amount of approximately Rs. 1.5 lacs was owed by the petitioner to respondent no. 2 firm. In order to discharge this debt, the petitioner issued two cheques bearing no. 087074 and 087075 dated 19.01.2015, amounting to Rs. 60,000/- (Rs. 30,000/- each), in favour of respondent no. 2 firm. Accordingly, the two cheques were deposited for encashment of the same. However, vide memo dated 25.03.2015, the above said cheques were returned unpaid with the remark, “Funds Insufficient”. Subsequently, this was brought to the notice of the petitioner and a legal notice dated 03.04.2015 was sent to the petitioner through registered post. The notice was received by the petitioner, but in spite of due service of notice, the petitioner did not respond. 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 to stand trial under Section 138 NI Act. Once the presence of the petitioner was secured, notice of accusation under Section 138 of the NI Act was served upon the petitioner to which the petitioner pleaded not guilty and claimed trial. The respondent no. 2 firm examined as many as 2 witnesses and tendered various documents as evidence to substantiate its complaint. In his statement recorded under Section 313 of Cr.P.C. the

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petitioner pleaded false implication, and closed his evidence for defence without examining any witness.

4. After examining all the material on record, the petitioner was convicted by the learned trial Court vide judgment dated 27.11.2017. Aggrieved by the same, the petitioner preferred an appeal before the Lower Appellate Court, which was dismissed vide judgment dated 14.09.2022.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 27.11.2017 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 6 months and 25 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.

Further, it is contended by the learned State counsel that the petitioner has been convicted in one other case of an identical nature.

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	05/07/2023 to 29/01/2024	6 months 25 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	05/07/2023 to 29/01/2024	6 months 25 days
5.	Actual undergone period	05/07/2023 to 29/01/2024	6 months 25 days
6.	Earned remission	-	-
7.	Total sentence including remission	05/07/2023 to 29/01/2024	6 months 25 days

11. A perusal of the judgment of conviction passed by the trial Court and the lower Appellate Court indicates no perversity in their findings and the same are based on correct appreciation of evidence available on record. 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 30.04.2015. The petitioner has faced the agony of a protracted trial, which has lasted for approximately 9 years. Out of the total sentence of 1 year, he has undergone actual sentence of 6 months and 25 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 14.09.2022 passed by the learned Additional Sessions Judge, Panipat confirming the conviction of the petitioner is upheld, however, the order of sentence dated 29.11.2017 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 amounting to Rs. 5000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/- and the petitioner is directed to deposit the same increased 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.
- iii Further, the fine of Rs. 75,000/- imposed upon the petitioner as compensation to respondent no. 2 under Section 357 of the Code of Criminal Procedure, 1973, by the learned trial Court is upheld. Since the petitioner has deposited an amount of Rs. 25,000/-, the same shall be deducted from the total fine amount imposed upon the petitioner as compensation.

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

(HARPREET SINGH BRAR)
JUDGE

30.01.2024
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>