

FACTUAL BACKGROUND

2. The facts, in brief, are that the petitioner borrowed an amount of Rs. 2,00,000/- from respondent no. 2-complainant and in order to discharge this debt, the petitioner issued a cheque bearing no. 078727 dated 23.07.2014, amounting to Rs. 2,00,000/- drawn upon Punjab and Sindh Bank, Branch Malout, in favour of respondent no. 2. Accordingly, respondent no. 2 deposited the above said cheque with her bank for encashment of the same. However, vide memo dated 25.07.2014, the above said cheque was returned unpaid with the remark, "Funds Insufficient". Subsequently, this was brought to the notice of the petitioner and a legal notice dated 06.08.2014 was sent to the petitioner through registered post. 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 27.08.2014. 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. Respondent no. 2 appeared as the sole witness and tendered various documents as evidence to substantiate her complaint. Subsequently, the statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded wherein the petitioner pleaded false implication, and examined one witness in his defence. Thereafter, numerous opportunities were granted to the petitioner to lead and conclude defence evidence, but the petitioner failed to do so. As a result, the defence evidence of the petitioner was closed by the Court's order.

CRR-2610-2023

3

4. After examining all the material on record, the petitioner was convicted by the learned trial Court vide judgment dated 17.05.2017. Aggrieved by the same, the petitioner preferred an appeal before the Lower Appellate Court, which was dismissed vide judgment dated 25.08.2023.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 17.05.2017 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 5 months and 08 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, 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. 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 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	25/08/2023 to 30/01/2024	5 months 08 days

3.	Interim bail	-	-
4.	Actual custody period after conviction	25/08/2023 to 30/01/2024	5 months 08 days
5.	Actual undergone period	25/08/2023 to 30/01/2024	5 months 08 days
6.	Earned remission	-	-
7.	Total sentence including remission	25/08/2023 to 30/01/2024	5 months 08 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. 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 27.08.2014. 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 2 years, he has undergone actual sentence of 5 months and 08 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 2 years 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 25.08.2023 passed by learned Additional Sessions Judge, Sri Muktsar Sahib confirming

the conviction of the petitioner is upheld, however, the order of sentence dated 17.05.2017 is modified to the extent that the sentence of rigorous imprisonment for 2 years awarded to the petitioner is reduced to the period of sentence already undergone by him.

- ii The sentence of fine amounting to Rs. 2000/- 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. Further, the fine of Rs. 2,00,000/- 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 shall remain intact.

14. Accordingly, the petitioner-accused is ordered to be released in the present case forthwith, if not required in any other case. Pending miscellaneous application(s), if any, shall also stand disposed of.

30.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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