

CRM-49448-2023
in/and CRR-2706-2023
Date of Decision: 23.01.2024

....Petitioner

M/S SHRIRAM TRANSPORT FINANCE CO. LTD.

...Respondent

Present: Mr. Kamal Narula, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-49448-2023

This is an application filed under Section 397(1) Cr.P.C. seeking suspension of sentence of the applicant/petitioner.

Custody certificate filed by the State is taken on record.

At this stage, learned counsel for the applicant/petitioner seeks permission to withdraw the instant application. Learned counsel further submits that he does not press the main case on merits and restricts his prayer to the modification of the order of quantum of sentence of one year, to that of the sentence already undergone by the applicant/petitioner as on date.

In view of the above, the application seeking suspension of sentence stands dismissed as withdrawn and on the request of the learned counsel for the petitioner, the main case, which is lying admitted is taken on board today itself.

This instant revision petition has been preferred against the judgment dated 20.09.2023 passed by learned Additional Sessions Judge, Ferozepur upholding judgment of conviction and order of sentence dated 05.10.2018passed by learned Judicial Magistrate Ist Class, Ferozepur in criminal case NACT/233/2015 instituted under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as NI Act). The petitioner was sentenced as under:-

Petitioner	Under Section	Sentence
Gurmit	138 NI Act	RI of 1 year with a fine of Rs.300/- in default of which RI for 7 days

FACTUAL BACKGROUND

2. Briefly, the facts are that the respondent company which is involved in the business of financing, leasing, hire purchase along with other business throughout India, also has a branch office in Moga, Punjab. From the aforesaid office, the petitioner got his vehicle make Mahindra 235 DI bearing R.C. No. PB 47B 6210 financed and consequently, a loan of Rs.1,30,000/- for his vehicle, was sanctioned vide agreement No.MOGA-B01042-000004. The petitioner was liable to return a total amount of Rs.1,90,255/- along with interest in 33 (thirty three) installments within due time. The petitioner in order to discharge his aforesaid legal liability issued a cheque bearing No.470807 dated 28.06.2013 of Rs.1,59,000/- drawn at PNB Bank, Ferozepur in favour of the respondent. However, the said cheque was dishonoured vide memo dated 02.07.2013 with remarks ‘Funds Insufficient’ upon its presentation to the bank. Thereafter, the petitioner was issued a demand notice dated 30.07.2013 by the

respondent but he failed to clear the said cheque amount within the stipulated period. Aggrieved by the same, the respondent preferred the above-mentioned complaint. The learned trial Court held the petitioner to be guilty in the said complaint and passed the aforementioned order of conviction as well as the order of sentence. Thereafter, the petitioner preferred an appeal before the lower Appellate Court which was dismissed thereby, affirming the findings of the learned trial Court.

CONTENTIONS

3. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 05.10.2018 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 who has already undergone a period of 4 months and 5 days of custody. He further submits that the petitioner has reformed and intends to live his life as a law-abiding citizen.

4. *Per contra*, learned State counsel opposes the prayer of the petitioners 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.

ANALYSIS AND OBSERVATIONS

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

6. 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 **RavadaSasikala 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.

7. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner is tabulated as under:-

Petitioner- Gurmit Singh

Sr No.	Particulars	Period	Duration
1.	Custody as under trial	-	0 days
2.	Custody after conviction	20.09.2023 to 23.01.2024	125 days

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3.	Interim bail	-	-
4.	Actual custody period after conviction	-	125 days
5.	Actual undergone period	-	125 days
6.	Earned remission	-	12 days
7.	Total sentence including remission		137 days

8. A perusal of the judgment of conviction passed by the learned trial Court and the learned Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer to quantum of sentence qua the petitioner.

CONCLUSION

9. The criminal case was instituted on 17.03.2015 before the learned trial Court. Petitioner has been facing protracted proceedings for about 9 years. As per his custody certificate, there are no other pending cases against him. 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.

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

- (i) The judgment dated 20.09.2023 passed by the Additional Sessions Judge, Ferozepur confirming the conviction of the petitioner is upheld, however, the order of sentence dated 05.10.2018 is modified to the extent that the

sentence of rigorous imprisonment for 1 year along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him. However, the compensation awarded in favour of the complainant shall remain intact.

- (ii) The sentence of fine of an amount of Rs.300/- imposed upon the petitioner by the learned trial Court is increased to Rs.10,000/-. 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.

11. In view of the above discussion, the present petition is partially allowed. Petitioner-Gurmit Singh is stated to be in jail in this case, so, he is ordered to be released immediately, if his custody is not required in connection with any other case. Pending miscellaneous application(s), if any, shall also stand disposed of.

January 23, 2024
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(HARPREET SINGH BRAR)
JUDGE

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