

231 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-2846-2023 (O&M)
Date of Decision: 09.02.2024

SURINDER KUMAR

...Petitioner

V/S

STATE OF HARYANA AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sahil Choudhary, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. A.K. Agnihotri, Advocate for respondent No. 2.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition has been preferred against the judgement of conviction and order of sentence dated 10.05.2017 passed by learned Judicial Magistrate Ist Class, Yamunanagar and the judgement dated 21.11.2023 passed by learned Sessions Judge, Yamunanagar vide which the appeal filed by the petitioner has been dismissed.

2. In compliance of his undertaking given before this Court on 12.12.2023, the petitioner has brought a sum of Rs. 1,00,000/- in cash in the Court today and the said amount has been handed over to Mr. A.K. Agnihotri, Advocate for respondent No. 2. Learned counsel for the petitioner submits that the amount of cheque in question was Rs. 1,67,000/- and 20% of the said amount has already been deposited with the learned lower Appellate Court during the pendency of the appeal and cash amount of Rs. 1,00,000/- has been handed over to learned counsel for respondent No. 2 in the Court today and receipt of it is taken on record.

3. Learned counsel for the petitioner submits that he is not assailing the impugned judgment of conviction dated 10.05.2017 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 in lieu of the abovesaid compliance.

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.

5. As per the custody certificate submitted by the learned state counsel, the petitioner has already suffered custody of 03 months out of the one year of total sentence awarded to him.

6. It is settled law that the proceedings initiated under Section 138 of the NI Act are quasi-criminal in nature and the object and purpose of this enactment is to provide a compensatory mechanism for expeditious recovery of money as opposed to punishing the accused. A two Judge Bench of the Hon'ble Supreme Court in **R. Vijayan Vs. Baby (2012) 1 SCC 260** has considered the said issue and come to the conclusion that punishing the offender is secondary concern.

7. The amendment carried out in the year 2002 in the NI Act intended to make the nature of offence under Section 138 of the NI Act as a civil wrong while making it compoundable. A two Judge Bench of the Hon'ble Supreme Court in **Meters and Instruments Private Limited and another Vs. Kanchan Mehta (2018) 1 SCC 560**, speaking through Justice A.K. Goel has held as under:-

“7. This Court has noted that the object of the statute was to facilitate

smooth functioning of business transactions. The provision is necessary as in many transactions' cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable..... xxxxx xxxxx xxxxx

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused."

8. 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 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. 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.

9. In view of the abovesaid discussion and the compliance made by the petitioner as mentioned above, the present revision petition is partly allowed and the sentence of the petitioner is modified to the extent of imprisonment already undergone by him. Petitioner-Surinder Kumar 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.

09.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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