



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

314

Criminal Revision No.70 of 2025 (O&M)
Date of decision: April 22nd, 2025

Mahboob Khan

.....Petitioner

Versus

Shriram Transport Finance Co. Limited

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Kanisht Ganeriwala, Advocate
for the petitioner.

Ms. Radhika Pathania, Advocate
for Mr. Nilesh Bhardwaj, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

CRM No.1185 of 2025

Prayer in this application is for condonation of delay of 79 days in filing the petition.

For the reasons mentioned in the application, the same is allowed.

Delay of 79 days in filing the appeal stands condoned.

CRR No.70 of 2025

Learned counsel for the petitioner has impugned the judgment of conviction and order of sentence dated 25.04.2018 passed by learned Judicial Magistrate 1st Class, Bhiwani, whereby the petitioner has been sentenced to undergo simple imprisonment for a period of six months and to pay ₹85,000/- as compensation to the complainant company and in default of payment of compensation, to further undergo simple imprisonment for six months, in a complaint filed under Section

138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act'), which was later upheld by learned Additional Sessions Judge, Bhiwani, vide judgment dated 26.07.2024.

2. The petitioner was convicted by the learned JMFC, Bhiwani, vide judgment dated 25.04.2018, for an offence punishable under Section 138 of the N.I. Act, pertaining to dishonour of cheque dated 04.02.2016 amounting to ₹85,000/-, which was issued in respect of hypothecation-cum-finance for Mahindra Jeep No.HR 11 5325.

3. The learned trial Court sentenced the petitioner to undergo six months simple imprisonment and further directed him to pay compensation in the nature of fine amounting to ₹85,000/-, and in default thereof, to further undergo simple imprisonment for a period of six months.

4. The said conviction and sentence were upheld by the learned Additional Sessions Judge, Bhiwani, vide order dated 26.07.2024. Since then, the petitioner has remained in custody.

5. Learned counsel for the petitioner has made the following submissions:

- (i) That the petitioner has already undergone the entire substantive sentence of six months as awarded for the offence under Section 138 of the N.I. Act. The custody certificate (Annexure P-2) reflects that the petitioner completed this substantive sentence on 25.01.2025.
- (ii) That the petitioner is presently undergoing the sentence imposed in default of payment of fine, having completed three months thereof, and continues to remain in jail solely for such default.

- (iii) That the imposition of six months imprisonment in default of payment of fine is in violation of the statutory mandate of Section 30(1)(b) of the Cr.P.C., which categorically prescribes that the maximum sentence in default shall not exceed one-fourth of the term of imprisonment awarded for the substantive offence. Thus, the permissible maximum in the present case would be 1½ months (i.e. one-fourth of six months).
- (iv) That the fine amount of ₹85,000/- was directed by way of compensation. However, the petitioner had already surrendered the hypothecated Mahindra Jeep to the respondent on 04.01.2019, which was re-possessioned by the respondent on the same day. This act of repossession adequately compensates the respondent for the alleged financial loss.
- (v) That this material fact regarding the return and repossession of the vehicle was not brought to the notice of the trial Court, due to deliberate concealment by the respondent, thereby frustrating a fair adjudication of the quantum of compensation.
- (vi) That the petitioner is not in a financial position to pay the fine amount of ₹85,000/-, and his further incarceration would amount to manifest injustice, particularly when the object of compensation stands fulfilled by repossession of the vehicle.

6. Learned counsel for the respondent does not dispute the

factual position that the petitioner has completed his substantive sentence and is undergoing imprisonment in default of payment of fine. It has also not been disputed that the vehicle in question stands re-possessioned. The learned counsel for the respondent also does not object to the prayer made for modification of the default sentence.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. This Court finds merit in the submissions advanced on behalf of the petitioner. It is not in dispute that the petitioner has served the entire term of six months awarded as substantive sentence. He is now incarcerated solely due to his inability to pay the fine amount. The relevant provision of Section 30(1)(b) of the Cr.P.C. reads as under:

“30. Sentence of imprisonment in default of fine. XXXX
XXXX XXXX XXXX
(a) XXXX XXXX XXXX
(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.”

9. A plain reading of the above provision makes it abundantly clear that the maximum sentence that can be awarded in default of fine must not exceed one-fourth of the term of substantive imprisonment. In the present case, the maximum permissible sentence in default could not have exceeded 1½ months (45 days). The sentence of six months in default is thus patently excessive and contrary to law.

10. Further, the mitigating circumstance of repossession of the vehicle by the respondent, which was the subject matter of the underlying transaction, materially impacts the need for imposition of

further penal consequences. The object of compensating the complainant appears to have been adequately served, and, therefore, further incarceration of the petitioner, solely due to his indigency, would be unjust and excessive.

11. In view of the foregoing discussion, the petition is allowed. The sentence awarded to the petitioner in default of payment of fine is hereby reduced to 1½ months (45 days) simple imprisonment in terms of Section 30(1)(b) of the Cr.P.C.

12. Since the petitioner has already undergone more than the reduced default sentence, he shall be released forthwith, if not required to be detained in any other case.

13. Since the main case has been decided, pending applications also stand disposed of.

April 22nd, 2025
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes