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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-113-2020 (O&M)
Date of decision: 16.01.2025

SUKHDEV SINGH

...PETITIONER

V/S

MAJOR SINGH AND ANOTHER

..RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lovish Arora, Advocate
for the petitioner.

Mr. Gurmeet Singh Saini, Advocate
for respondent No. 1.

Mr. Sandeep Kumar, DAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This revision petition has been preferred against the judgment dated 23.05.2019 passed by learned Sessions Judge, Fazilka, vide which, judgment of conviction and order on quantum of sentence dated 08.01.2019 passed by learned Sub Divisional Judicial Magistrate, Jalalabad(West) in a complaint case filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as ‘NI Act’) have been upheld.
2. The petitioner was sentenced as under:

Offence	Sentence
138 NI Act	Rigorous Imprisonment for one and half year with a compensation of Rs. 12,50,000/-

3. Brief facts as per the averments made in the complaint are that in the month of May-2015, accused-petitioner took a loan of Rs.25,00,000/- from the complainant with promise to repay the same within one month and in order to discharge his liability to pay/clear the dues/debts of the complainant, petitioner Sukhdev Singh issued a cheque bearing No.000023 dated 05.12.2015 for Rs.25,00,000/- under account No.50100020471856 drawn on HDFC Bank, branch Faridkot Road, Sadiq, District Faridkot in favour of complainant with



assurance of encashment of cheque on its presentation before the bank concerned. That complainant presented the said cheque through Oriental Bank of Commerce, Branch Jalalabad(W) for encashment purpose by way of collection of funds/cheque amount from abovesaid account of the petitioner with HDFC Bank, Branch Faridkot road, Sadiq, District Faridkot, but the cheque in question was dishonored and returned as unpaid with cheque return memo dated 07.12.2015 with remarks "Funds Insufficient". After dishonouring of the cheque, the complainant approached the petitioner and apprised him of the abovesaid fact of dishonouring of the cheque with a request to amicably make payment of cheque amount to the complainant either in cash or to deposit sufficient funds in his abovesaid bank account with directions to his banker to honour the cheque in question, but instead of acceding to the request of the complainant, the petitioner flatly disclosed that the said cheque was issued intentionally and deliberately with *mala fide* and dishonest intention to cheat and defraud the complainant. Thereafter, complainant got served a legal notice dated 07.12.2015 calling upon the petitioner to make the payment within the prescribed period of 15 days from the receipt of notice but to no avail. Hence, the present complaint.

4. The petitioner was convicted and sentenced vide judgment dated 08.01.2019 passed by learned trial Court, which has also been upheld by learned lower Appellate Court vide judgment dated 23.05.2019.

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 08.01.2019 on merits and restricts his prayer to modification of the order on quantum of sentence to that of the sentence already undergone by the petitioner. Petitioner has undergone a total period of 14 months out of total 18 months of imprisonment awarded to him.

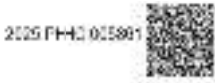
6. *Per contra*, learned State counsel opposes the prayer of the



petitioner on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has also been upheld by the learned lower Appellate Court and as such, he does not deserve any leniency.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. 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 ***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.



9. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. Moreover, learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

10. The present complaint is of the year 2016 and the petitioner has been suffering the agony of protracted trial for last 8 years. Since his conviction, the petitioner has grown into law-abiding citizen and desire to live a peaceful life. Perusal of record indicates that, petitioner has undergone total custody of 14 months and 11 days out of total sentence of 18 months awarded to him.

11. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

12. Consequently, the present petition is disposed of in the following terms:-

(i) The judgment dated 23.05.2019 passed by the learned Sessions Judge, Fazilka, affirming the judgment of conviction is upheld, however, the order of sentence dated 08.01.2019 is modified to the extent that the sentence of rigorous imprisonment for one and half year along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him. However, the compensation as awarded by the learned trial Court would remain intact and respondent would be at liberty to recover the same in accordance with law.

January 16, 2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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