

V/S

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Satbir Gill, Advocate
for the petitioner.

Mr. Dheeraj Narula, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision petition has been preferred against the judgment dated 27.01.2020 passed by learned Additional Sessions Judge, Sirsa, vide which, judgment of conviction and order on quantum of sentence dated 06.10.2015 passed by learned Judicial Magistrate Ist Class, Ellenabad in a complaint case filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') was partly upheld.

2. The petitioner was sentenced as under:

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

3. The case of the complainant/respondent was that he was having cordial relations with the accused-petitioner. In the month of April, 2013 petitioner took an amount of Rs. 4,50,000/- in cash as loan on interest from the complainant for his urgent requirement. At that time petitioner assured that he will repay the borrowed amount within a period of two months. But despite expiry of period of two months, the petitioner failed to make the payment. It



was submitted that petitioner in discharge of his pre-existing liability, issued a cheque bearing no. 466033 dated 28.06.2013 for Rs.4,50,000/- drawn on State Bank of India, Branch Kaluana, Sirsa in favour of the complainant. When this cheque was presented by complainant for encashment through his banker the same was returned unpaid with remarks 'Funds Insufficient' vide return memo dated 01.07.2013. Thereafter, legal notice dated 08.07.2013 was issued to the petitioner calling upon him to make the requisite payment within fifteen days but no payment was made by him. As such, the complaint under Section 138 of the Negotiable Instruments Act was presented by the complainant.

4. The petitioner was convicted and sentenced vide judgment dated 06.10.2015 passed by learned trial Court and sentenced to undergo rigorous imprisonment for two years and he was further directed to pay compensation to the tune of double of the cheque amount. However, the appeal filed against the said judgment was partly allowed by learned Additional Sessions Judge, Sirsa vide judgment dated 27.01.2020 vide which the period of sentence was reduced from two years to one year and the amount of compensation was reduced to Rs. 5,00,000/-

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 27.01.2020 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 04 months and 06 days of imprisonment out of total sentence of one year awarded to him.

6. *Per contra*, learned counsel for the respondent 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 partly upheld by the learned lower Appellate Court

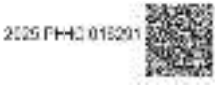


and as such, he does not deserve any leniency.

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 Courts below indicate 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 2013 and the petitioner has been suffering the agony of protracted trial for last 11 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 04 months and 06 days out of total sentence of 1 year 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 27.01.2020 passed by the learned Additional Sessions Judge, Sirsa, affirming the judgment of conviction is upheld, however, the order of sentence is modified to the extent that the sentence of rigorous imprisonment for one year awarded to the petitioner is reduced to the period of sentence already undergone by him. However, the compensation as awarded by the learned lower Appellate Court would remain intact and respondent would be at liberty to recover the same in accordance with law.

February 04, 2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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