

247 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-4799-2015 (O&M)
Date of Decision: 05.03.2025

ANIL KUMAR

...Petitioner

V/S

RUPINDER SINGH

...Respondent

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mukul Goyal, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition is preferred against the judgment dated 16.11.2015 passed by learned Additional Sessions Judge, Karnal vide which judgment of conviction and order on quantum of sentence dated 23.02.2015/27.02.2015 passed by learned Judicial Magistrate Ist Class, Karnal have been upheld, whereby, petitioner has been convicted and sentenced as under:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
138 of Negotiable Instruments Act	Rigorous imprisonment for one year and six months	Rs. 500/-	Simple imprisonment for 07 days

2. Brief facts of the present complaint are that the complainant-re-spondent and accused-petitioner had friendly relations with each other. The petitioner borrowed an amount of Rs. 1,24,000/- as a friendly loan from com-plainant and at that very time, he issued a post dated cheque bearing no.293424 dated 23.07.2011 for Rs.1,24,000/- drawn at Punjab National Bank, Chandigarh in favour of the complainant. The aforesaid cheque was is-sued by the petitioner to pay the amount of Rs.1,24,000/- borrowed by him as

a friendly loan. The respondent presented the said cheque for encashment with his bankers but the same was returned unpaid with remarks "Funds Insufficient" vide memo dated 23.7.2011. Thereafter, statutory legal notice dated 05.08.2011 was duly served upon the accused through registered post whereby he was called upon to make the payment of cheque but the accused has failed to make payment of the cheque within the stipulated time of 15 days and hence the complainant filed the present complaint.

3. After assessing the material available on record, the learned trial Court convicted and sentenced the petitioner vide judgment of conviction and order of sentence dated 23.02.2015/27.02.2015. Aggrieved by the same, the petitioner preferred an appeal before the learned Appellate Court, which was dismissed vide judgment dated 16.11.2015.

4. Learned counsel for the petitioner contends that after dismissal of the appeal by learned lower Appellate Court, wife of the petitioner has settled the matter by way of compromise dated 02.12.2015 and wife of the petitioner had paid the entire consideration/settled amount of Rs. 75,000/- to the respondent in lump sum and now remains no dues towards the petitioner. A copy of the compromise is annexed as Annexure P-1. Further, learned counsel for the petitioner prays that the petitioner may be released on probation of good conduct, in view of the compromise.

5. Learned State counsel has filed the letter dated 07.03.2025 received from Deputy Superintendent of Prison, District Prison (Karnal). Same is taken on record. Aforementioned letter reveals that the petitioner has not undergone any custody in the present case.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that complaint in the present case was registered on 06.09.2011 and the petitioner has been suffering the agony of trial since the last more than 13 years.

7. Section 3 and 4 of the Probation of Offenders Act, 1958 (hereinafter to be referred to as 'the Act') empowers the Courts to release the convicts if deemed appropriate in view of circumstances of the case. Similarly, Sections 360 and 361 of the Cr.P.C also allows the Courts to release convicts on probation for good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in ***Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722*** speaking through Justice Bela M. Trivedi, has held as under:-

“6. ...having regard to the fact there are no criminal antecedents against the petitioners, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the petitioners, it is directed that the petitioners shall be released on probation of good conduct.....”

A two Judge Bench of the Hon'ble Supreme Court in ***Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763*** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

Further still, a two Judge Bench of the Hon'ble Supreme Court in ***Lakahnlal @ Lakahn Singh vs. State of Madhya Pradesh (2021) 6 SCC 100*** has opined as follows:

“15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders”

8. The Hon'ble Supreme Court in ***Bishnu Deo Shah Vs. State of West Banal AIR 1979 SC 964*** has laid down that it is obligatory on the part of the Court to deal with a convict under the provisions of Section 360 of the Cr.P.C., if he is not convicted for an offence punishable with death penalty or imprisonment for life and additionally, if he is not a previous convict. The overarching object of the provision contained in Section 4 and 6 of the Act and Section 360 and 361 of Cr.P.C. is to provide an opportunity to the first time offenders to reform and not expose them in association with the hardened and habitual criminal inmates incarcerated in the judicial custody.

9. In view of the facts and circumstances of the case, the instant revision petition is disposed of, in the following terms:-

1. The judgment of conviction dated 16.11.2015 passed by the learned Additional Sessions Judge, Karnal, is upheld.

2. The order of sentence dated 27.02.2015 passed by the learned Judicial Magistrate Ist Class, Karnal is modified to

the extent of granting the concession of probation to the petitioner for good conduct.

3. The petitioner shall be released on probation for good conduct on furnishing a personal bond of Rs.10,000/- with a surety for the same amount, after furnishing an undertaking to keep the peace and good behaviour for a period of one year to the satisfaction of the concerned trial Court, within four weeks.

4. The petitioner shall remain under the supervision of the concerned Probation Officer during the aforesaid period. If the petitioner fails to comply with the said directions or commit breach of the undertaking rendered by him, he shall be called upon to undergo the sentence imposed upon him by the learned trial Court.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

05.03.2025
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No