



**242 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-34969-2021 in/and
CRR-3867-2016
Date of decision: 03.02.2025**

MAHAVIR SINGH

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashwani Verma, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Manjit Singh, Advocate for

Mr. S.K. Bishnoi, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

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This is an application filed on behalf of respondent No.2 for fixing of actual date of hearing of the present case.

Learned counsel for the non-applicant/petitioner submits that he has no objection, in case the present application be allowed.

For the reasons mentioned in the application and in view of no-objection rendered by learned counsel for the non-applicant/petitioner, the same is allowed.

On joint request, main case is pre-poned and the same is taken on board today itself.

MAIN CASE

1. This revision petition has been preferred against the judgment dated 29.09.2016 passed by learned Additional Sessions Judge, Fatehabad, vide which, judgment of conviction dated 20.05.2014 and order on quantum of

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sentence dated 22.05.2014 passed by learned Chief Judicial Magistrate, Fatehabad 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
138/142 NI Act	RI for 06 months with an amount of Rs.3,30,000/- as compensation to the complainant.

3. Briefly, present complaint was filed by respondent No.2-Firm M/s Khalsa Auto Mobiles above, through one of its partners, with the allegations that the petitioner/accused had got credited the lazer-leveller and it was assured by the petitioner that he will repay the said amount to the complainant as soon as possible. Thus, the petitioner was lawfully liable to pay a sum of Rs.3,30,000/-. After great efforts of complainant, the petitioner agreed to repay the above said amount to the complainant and issued a cheque No.156559 dated 25.03.2013, drawn on the Bank of India branch Fatehabad, against A/c No.676910110002631, in discharge of his legal financial liability and he had assured that the cheque shall be encashed upon presentation to Bank. But when the complainant presented this cheque with his banker Oriental Bank of Commerce branch Fatehabad, the same was dishonoured with the remarks 'insufficient fund' vide memo dated 26.03.2013. After dishonouring of the cheque, on 04.04.2013, the complainant issued a legal notice to the petitioner, calling upon him to make the payment of Rs.3,30,000/- within 15 days of the receipt of notice. But the petitioner did not make the requisite payment. Hence, the present complaint.

4. The petitioner was convicted and sentenced vide judgment and



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order of sentence dated 20/22.05.2014 passed by learned trial Court, which have also been upheld by learned lower Appellate Court vide judgment dated 29.09.2016.

5. Learned counsel for the petitioner contends that the petitioner has been convicted by learned trial Court and sentenced to undergo a period of rigorous imprisonment for a period of six months along with compensation of Rs.3,30,000/- to be paid to the complainant. Learned counsel submits that he is not assailing the impugned judgment of conviction dated 29.09.2016 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. He further submits that he has no objection in case, the amount of Rs.50,000/- deposited with the trial Court at the time of bail of the petitioner, be released in favour of respondent No.2. The petitioner has undergone a total custody period of 27 days and he is not involved in any other case.

6. *Per contra*, learned State counsel assisted by learned counsel for respondent No.2 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



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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 2013 and the petitioner has



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been suffering the agony of protracted trial for last more than 11 years. Since his conviction, the petitioner has grown into law-abiding citizen and desires to live a peaceful life. As per his custody certificate, he is not involved in any other case and has undergone total sentence of 27 days, out of total sentence of six months, in the instant case.

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 and the judgment dated 29.09.2016 passed by the learned Additional Sessions Judge, Fatehabad, affirming the judgment of conviction is upheld, however, the order of sentence dated 22.05.2014 is modified to the extent that the sentence of rigorous imprisonment for six months along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him. However, the amount of Rs.50,000/- deposited with the trial Court at the time of bail of the petitioner, is ordered to be released in favour of respondent No.2, against proper receipt and identification and the compensation as awarded by the learned trial Court would remain intact and respondent No.2 would be at liberty to recover the compensation amount in accordance with law.

February 03, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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