



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-612-2016 (O&M)
Date of decision: 28.11.2025

Dilbagh Singh ...Petitioner(s)

VERSUS

Prahlad Rai Sharma and another ...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Ms. Manju Goyal, Advocate for the petitioner
(Legal Aid Counsel)-(through V.C).

Ms. Garima Kuthiala Prashar, Advocate for respondent No.1
(Legal Aid Counsel).

Ms. Savi Nagpal, AAG Punjab, for respondent No.2.

VINOD S. BHARDWAJ, J. (Oral)

1. The instant criminal revision has been preferred against the judgment dated 09.12.2015 passed by Additional Sessions Judge, SAS Nagar (Mohali) whereby the Criminal Appeal bearing No.15/02.01.2015 preferred by the petitioner against the judgment of conviction and order of sentence dated 05.12.2014 passed by the Judicial Magistrate 1st Class, Kharar, for commission of offence Section 138 of Negotiable Instruments Act, 1881 arising in complaint bearing No.RT-79/23.05.2013/19.08.2013 was dismissed. The petitioner has been sentenced as under:-

Under Section	Sentence
Section 138 of the Negotiable Instruments Act, 1881.	Rigorous imprisonment for a period of 01 year and to pay a compensation of Rs.4,70,000/- to the complainant within 3 months from the date of order i.e. 05.12.2014 and in default thereof, the same was ordered to be recovered as fine.



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2. As no one had been appearing either on behalf of the petitioner or the complainant despite the matter having been filed in the year 2016 and a period of more than 9 years having elapsed, hence, legal aid counsel for both the parties were appointed on the earlier date. As no one chose to still appear, hence, the matter is being finally adjudicated.

3. Briefly the facts necessary for appreciation of the case are that respondent No.1-complainant filed a complaint under Section 138 of the Negotiable Instruments Act alleging that the petitioner-accused had entered into an agreement to sell dated 06.04.2011 with the complainant and two other persons for the sale of land measuring 420 square yards bearing plot numbers 1 2 3 and 4 at Tehsil Kharar District Mohali @ Rs.11,500/- per square yard. The complainant along with the two other purchasers paid a total sum of Rs.10 lakh as earnest money out of which the complainant paid Rs.3,50,000/- through cheque which was duly encashed by the accused. 31.08.2011 was fixed as the date for execution of the sale deed. On that date the target date for execution of the sale deed was extended up to 30.09.2011 but he failed to execute the sale deed. Thereafter when the accused was contacted by the complainant and the other persons regarding refund of the earnest money the accused (petitioner) paid Rs.40,000/- in cash on 17.11.2011 and issued a cheque bearing No.184897 dated 21.11.2011 for a sum of Rs.3,10,000/- drawn on Central Bank of India in favour of the complainant but the said cheque was dishonoured with the remarks "Insufficient Funds". When contacted the petitioner-accused sought six months' time and asked the complainant to present the cheque again. The



cheque was again dishonoured with the remarks “Insufficient Funds” and accordingly a legal notice demanding Rs.3,10,000/- was issued calling upon the accused to clear the amount of the dishonoured cheque. Another legal notice was thereafter served upon the accused for dishonour of cheque No.265405 dated 07.03.2012 for Rs.1,50,000/-. Before the complainant could file a complaint under Section 138 of the NI Act the accused again approached the complainant in the last week of July 2012 seeking further time to clear the dishonoured cheques and issued another cheque bearing No.265407 dated 01.02.2013 for Rs.4,70,000/- drawn on Punjab National Bank in favour of the complainant. When this cheque was presented on 03.04.2013 it was dishonoured with the remarks “Funds Insufficient” and intimation regarding dishonour was received by the complainant on 08.04.2013. The complainant issued a legal notice of demand under Section 138 of the NI Act on 02.05.2013 through registered A.D. at both addresses of the accused demanding payment of Rs.4,70,000/- within 15 days and the registered cover was returned with the remarks “Refused”. Hence the complaint was filed.

4. On the basis of pre-summoning evidence led by the complainant, the accused was ordered to be summoned to face trial under section 138 of NI Act. On appearance, the petitioner was granted bail and notice of accusation was served upon him to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the complainant Prahlad Rai Sharma (CW-1) tendered his duly sworn affidavit Ex.CW-1/A in evidence alongwith



the documents which included the copy of the legal notice dated 12.06.2012 (Exs. C1 to C3) the cheque No.265407 (Ex. C4) the A.D. envelopes (Exs. C6 to C10). Thereafter his evidence was closed.

6. After the complainant concluded his evidence, the statement of the petitioner-accused was recorded under Section 313 of the Code of Criminal Procedure 1973 wherein all incriminating fact and circumstances appearing in the prosecution evidence were put to him. The petitioner-accused denied every allegation and pleaded innocence. He stated that the complainant failed to produce and place on record the original agreement to sell as well as the cheque dated 21.11.2011. He further asserted that the cheque in question had never been issued by him in favour of the complainant for the discharge of any legal liability. He also contended that the complainant did not serve the legal notice at his correct address and as per the documents placed on record by the complainant the address mentioned therein is incorrect and no notice was ever received by him. He further stated that the complainant intentionally misused the disputed cheque which had never been handed over by him to the complainant nor had he filled the body of the cheque or any of the particulars contained therein.

7. After considering the arguments advanced by the counsel of the parties, the testimonies of witnesses and the evidence placed on record, the Judicial Magistrate 1st Class, Kharar, vide judgment and order of sentence dated 05.12.2014, held the petitioner guilty of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him as above.



8. Aggrieved by the aforesaid judgment of conviction and sentence, the petitioner preferred Criminal Appeal No.15/02.01.2015 before the Court of the Additional Sessions Judge, SAS Nagar (Mohali). However, vide judgment dated 09.12.2015, the Additional Sessions Judge, SAS Nagar dismissed the aforesaid appeal and consequently affirmed the judgment of conviction and order of quantum of sentence dated 05.12.2014 passed by the Judicial Magistrate 1st Class, Kharar. Hence, aggrieved by the said judgment of conviction and order of quantum of sentence dated 05.12.2014 and judgment dated 09.12.2015, the present revision petition has been preferred.

9. At the outset, counsel for the revisionist-petitioner submits that vide order dated 11.11.2016 passed by this Court, after considering an actual period of sentence of 09 months and 17 days and a total period of 11 months 13 days, out of sentence of 01 year the remaining sentence of the petitioner was suspended. She contends that she does not press the present revision petition on merits and would confine her challenge only to the quantum of punishment awarded to the petitioner. The following mitigating circumstances have been pointed out by the learned counsel for the petitioner:

- (i) That the complaint in question was filed in the year 2013, and more than 12 years have since elapsed. At the time of the incident, the petitioner was approximately 36 years old and prior thereto or since then, he has not been involved in any other offence or criminal activity.
- (ii) That the petitioner has endured the ordeal of a prolonged



criminal trial spanning over a period of 12 years.

- (iii) The offence under Section 138 NI Act essentially arises out of a *purely financial transaction* and does not involve moral turpitude or violence. Hence, the object of the statute being compensatory rather than punitive, incarceration may not serve any penological purpose.
- (iv) The petitioner has already undergone an actual sentence of 9 months 17 days and a total sentence of 11 months 13 days out of total sentence of 01 year. Hence, the sentence has already been substantially undergone.

10. Learned State Counsel, on the other hand, reiterates the findings recorded by the Courts below and submits that the petitioner has been rightly convicted.

11. Counsel for respondent-complainant does not dispute the said facts.

12. I have heard learned counsel for the parties and have gone through the impugned judgments.

13. Since the petitioner has given up the challenge to the judgment of conviction on merits, hence, the said issues are not being gone into at this stage. The discussion is thus restricted solely to the issue of sentencing and quantum of punishment.

14. The purpose of sentencing being both deterrent as well as reformatory, hence, while sentencing of an accused factors, such as psychological and sociological circumstances of an accused; the gravity,



nature and manner of committing the offence; the consequences, the social reaction of the offence; the antecedents and tendencies of an accused should be taken into consideration.

15. In the present case, there is nothing on record to reflect that the petitioner possesses a criminal bent of mind or that his conduct poses any threat to the society. Hence, by the broader principles of criminal jurisprudence, no adverse presumption can be drawn against the revisionist-petitioner.

16. This Court, in CRR-2697-2025 titled ***Lakshay Jain v. State of Punjab & Another***, vide order dated 14.11.2025, has held that sentencing must prioritise a reformatory approach, assessing an offender's background and circumstances rather than adopting a purely punitive stance. Mere involvement in an offence does not, by itself, establish criminality; instead, the totality of circumstances including the manner of the act, antecedents, conduct, and intent must guide sentencing. The law, therefore, distinguishes between errors of judgment and acts driven by deliberate *mens rea*, recognising that offenders are often capable of reform and should not be presumed beyond rehabilitation. The relevant extract of the aforesaid judgment are as follows:

32. *The imposition of punishment is a refined judicial function that demands a careful harmonization of its underlying purposes namely, retribution, deterrence, and reformation. This balance must reflect not only the reasoning of the Court but also the ethical standards and social context in which justice is administered. As societal values and circumstances evolve, the prominence accorded to each of these aims necessarily varies,*



requiring the Court to adapt its emphasis in response to the changing demands of justice. The aforesaid principle found early articulation in the writings of Justice Caldwell, who, in his authoritative work “Criminology,” observed that:

“If the infliction of pain is to have its greatest effect upon the behavior of a person, it must follow soon after the act for which it is given. But punishment always takes place weeks or even months after the offense has been committed, since the offender must first be apprehended, tried, and convicted. Such delay tends to disconnect the punishment from the offense in the mind of the offender, and it may well be considered as merely another painful experience in an unjust world.”

33. *Moreover, Italian criminologist and jurist Cesare Beccaria, in his seminal treatise “On Crimes and Punishments,” propounded the doctrine of penal parsimony, emphasizing that the justification of any criminal justice system rests upon its capacity to inflict the least possible evil necessary to achieve its ends. The underlying premise is that punishment, being in itself a necessary evil and devoid of inherent virtue, must be confined strictly within the bounds of necessity. The imposition of suffering or restriction upon an offender cannot extend beyond what is indispensable for the preservation of social order.*

34. *While ‘retributive’ object of sentencing is seen regressive, in modern day sentencing jurisprudence for its focus on punishing proportionally for the harm done and caters to the negative senses of spite and anger against a wrongful act, the rehabilitative/reformative approach examines the circumstances surrounding the offender on social, economical, physical and psychological level so as to reintegrate the*



offender in the social mainstream. The law extends the benefit of good and perceives a probability and possibility of reform. It aims at capitalising a perceived social liability. The expectation of law is based on the surrounding circumstances to distinguish between a 'criminal' and an 'offender'.

35. *While the pre-requisites of crime do not distinguish two persons, on the legal scale, this aspect is significant for sentencing. A mere involvement of a person in crime may not necessarily mark a person as a 'criminal.' 'Criminality' in mind and action has to be determined from the totality of circumstances including the mode and manner in committing an offence, the conduct pre and post the offence, the criminal antecedents, nature of involvement, influence of peers etc. and not just from an isolatory consideration of commission of an offence. A Court of law would not assume every offender to be beyond reform and differentiate in punishment on considering whether the offences arise due to human error or that stem from actions propelled by mens rea.*

36. *The case in hand is yet another where interest of justice would warrant a reformatory approach in precedence to a punitive or retributive approach. It is not the function of the judges to seek the transformation of human nature itself, but rather to shape the framework within which individuals perceive that adherence to the law aligns with their own best interests.*

17. Adverting to the facts of the present case and the mitigating circumstances pointed out by counsel for the petitioner establish that petitioner is a first-time offender with no criminal antecedents. He has undisputedly faced agony of criminal trial for more than 12 years. He is now nearing 50 years of age. He is not stated to be involved in any other



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case. Besides, he has already undergone an actual custody of 09 months 17 days and total sentence of 11 months 13 days out of the awarded sentence of 1 years.

18. Taking into consideration the aforesaid facts and circumstances, the criminal revision petition is *partly allowed* and the sentence awarded is reduced to that *already undergone* by the revisionist-petitioner.

19. Pending criminal misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

28.11.2025
Mangal Singh

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