



CRR-2065-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-2065-2018 (O&M)

Date of Decision: 27.01.2025

INDIABULLS HOUSING FINANCE LTD.

...Petitioner

Versus

JOY GOPAL MUKHERJEE

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Kiran Bala Jain, Advocate with
Ms. Anjali Jain, Advocate for the petitioner.

Harpreet Singh Brar, J. (Oral)

1. The present revision petition is preferred against the judgment dated 08.01.2018 passed by learned Additional Sessions Judge, Gurugram whereby the judgment of conviction dated 19.08.2017 passed by learned Judicial Magistrate Ist Class, Gurugram in complaint bearing CIS No. 8398/2015 under Section 138/142 of Negotiable Instruments Act was upheld and order of sentence dated 21.08.2017 was modified to grant the concession of probation to the accused person.

2. Brief facts of the case as mentioned in the complaint are that complainant company i.e. M/s Indiabulls Housing Finance limited, is a company incorporated and registered under the Companies Act, 1956 and is engaged in the business of finance and advancing loans etc. The accused had approached the complainant company for loan and the complainant-company had sanctioned the loan to the accused for a sum of Rs. 3,76,928/- under the scheme of Loan vide loan account no. HHEDUR00016573. Towards partial discharge of the loan account, he issued cheque bearing no. 356691 dated 25.10.2015 amounting to Rs. 22,995/- drawn on UCO Bank in favour of complainant. He assured that the

said cheque would be encashed. On presentation of said cheque by the

complainant in its banker Yes Bank, Gurgaon, the same was dishonoured by the bank of accused vide memo dated 03.11.2015. Thereafter, complainant issued legal notice dated 01.12.2015 but despite being served with legal notice, the accused did not make the payment within mandatory period of 15 days. Hence, the said complaint.

3. On assessing all the material available on the record, the learned trial Court vide judgment dated 19.08.2017 and order of sentence dated 21.08.2017 convicted the respondent-accused for offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of six months and was further directed to pay Rs. 30,000/- as compensation to the complainant. Aggrieved by the same, the respondent-accused preferred an appeal before the learned lower Appellate Court wherein the judgment of conviction was upheld but the order of sentence was modified to extend the concession of probation to the respondent-accused vide judgment dated 08.01.2018.

4. Learned counsel for the petitioner contends that the learned lower Appellate Court fell into error by modifying the sentence of the respondent to probation for a period of one year as the same is based on untenable grounds. The notice of accusation against the respondent-accused stands duly proven by all the prosecution witnesses and as such, the learned Court below ought not to have granted the benefit of probation to him.

5. Learned State counsel supports the impugned judgment and submits that the respondent-accused was correctly granted the benefit of probation for his good conduct on furnishing probation bonds which serves the ends of justice.

6. Having heard the learned counsel for the parties and after perusing

maintained good conduct and does not have criminal antecedents. The theory of reformation and rehabilitation aims at separating the criminal from the crime and compels us to look beyond the one fateful act committed by him. In a civilised society like ours, it would be truly unfortunate if an offender is not given the opportunity to realise and fully fathom his mistake and channel that awareness into making fruitful contributions in society. A Co-ordinate bench of this Court in *Nasri v. State of Haryana 2023(2) Law Herald 2203*, speaking through Justice Arun Monga, made the following observations:

“11.2. Objectives and principles of criminal law as envisioned in the provision ibid, apart from deterrence against committing crime against society, are inter-alia focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime. The goal of criminal law extends beyond mere punishment. While punishment serves to deter and hold individuals accountable for their actions, there is a growing recognition of the importance of addressing the underlying factors that contribute to criminal behaviour. This perspective emphasizes the potentials of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective. In certain cases, certain offenders may be asked to remain under community supervision rather than being incarcerated. During such probation period, the offender can be put to follow certain conditions, such as regular reporting to a probation officer, participating in counselling or treatment programs and maintaining employment or education. The aim is to provide support, guidance and opportunities for the offender and to address the root causes of their criminal behaviour and develop positive life skills. Close monitoring and guidance provided during probation can help the offender make positive changes in their life and reduce the likelihood of re offending.”

7. In view of the facts and circumstances of the case, this Court finds no perversity or illegality in findings recorded by the learned lower Appellate Court which warrants interference. Hence, the instant revision petition stands dismissed.

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

(HARPREET SINGH BRAR)
JUDGE

27.01.2025
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No