

246

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1206-2020 (O & M)
Date of decision: 09.01.2025

UDEYBHAN

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Himani Sharma, Advocate for
Mr. M.S. Rana, Advocate for the petitioner.
Ms. Geeta Sharma, DAG, Haryana.
Mr. Sumit Batra, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision petition has been preferred against the judgment dated 06.10.2020 passed by learned Sessions Judge, Rohtak, vide which, judgment of conviction and order on quantum of sentence dated 16.10.2019 passed by learned Judicial Magistrate Ist Class, Rohtak 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 NI Act	RI for 02 years with a compensation of Rs.57,05,000/- in default of payment of fine to undergo RI for 06 months.

3. Brief facts of the case are that the FIR (supra) was registered on the statement made by complainant representative Naveen Kumar (hereinafter referred to the complainant) to the effect that the accused approached the complainant for home loan and after agreeing upon all the terms and



conditions, complainant advanced the accused required amount and for this, accused executed an agreement with complainant and accepted to pay monthly installment's (EMI) of advanced amount regularly. Payment of EMIs were never regular and even not paid most of the times. Accused, in order to discharge legal enforceable liability to pay the outstanding amount towards pending EMI's alongwith charge issued cheque bearing no.581957 dated 15.12.2016 account no.1952010100002173 drawn on Punjab National Bank, Sonapat for Rs.48,45,360/- (Ex. C-4) in favour of complainant, with an assurance that the aforesaid cheque will be honoured as and when it will be presented for collection. The complainant presented the cheque for its encashment in his account, but the said cheque was returned unpaid by the banker i.e. Axis Bank, Rohtak vide return memo dated 20.12.2016 i.e. (Ex. C-5) remarking therein "Funds Insufficient". The complainant served legal notice dated 06.01.2017 (Ex. C-8) through his counsel, vide registered postal receipts (Ex. C-6 and Ex. C-7) demanding therein to make payment of cheque amount to the complainant. The accused failed to make the payment. Hence, this complaint.

4. The petitioner was convicted and sentenced vide judgment dated 16.10.2019 passed by learned trial Court, which has also been upheld by learned lower Appellate Court vide judgment dated 06.10.2020.

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 16.10.2019 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 01 year, 01 month and 11 days, including remission and is not involved in any other case.



6. *Per contra*, learned State counsel opposes the prayer of the petitioner as 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 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 2017 and the petitioner has been suffering the agony of protracted trial for last 7 years. Since his conviction, the petitioner has grown into law-abiding citizen and desire to live a peaceful life. As per his custody certificate, he is not involved in any other case and has undergone total sentence of 01 year, 01 month and 11 days, including remission out of total sentence of two years, 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 in the following terms:-

(i) The judgment dated 06.10.2020 passed by the learned Sessions Judge, Rohtak, affirming the judgment of conviction is upheld, however, the order of sentence dated 16.10.2019 is modified to the extent that the sentence of rigorous imprisonment for two years along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him subject to payment of Rs.3,695/- as fine to be deposited in the Court.

However, the compensation as awarded by the learned trial Court

would remain intact and respondent would be at liberty to recover
the same in accordance with law.

January 09, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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