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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2252-2019 (O & M)
Date of decision: 30.01.2025

GAGANDEEP SINGH @ HAPPY

V/S

STATE OF PUNJAB AND ANOTHER

...PETITIONER

...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

Mr. Rishu Mahajan, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision petition has been preferred against the judgment dated 19.08.2019 passed by learned Additional Sessions Judge, Amritsar, vide which, judgment of conviction and order on quantum of sentence dated 14.07.2017 passed by learned Judicial Magistrate Ist Class, Amritsar 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 fine of Rs.1,000/-, in default of payment of fine to undergo RI for 15 days.

3. Briefly, the case of complainant is that petitioner/accused has taken a friendly loan of Rs.4,00,000/- from the respondent No.2/complainant and in discharge of his said legal debt and liability, the petitioner/accused issued one cheque bearing No.531807 dated 25.05.2015 for Rs.4,00,000/- drawn on Canara Bank, Branch Meerankot Kalan, Amritsar, in favour of



respondent No.2/complainant, with an assurance that the said cheque being good for payment would be duly honoured as and when presented. On the assurance given by the petitioner/accused, the respondent No.2/complainant presented the said cheque to the banker of the petitioner/accused through his banker i.e. Canara Bank, Branch Meerankot Kalan, Amritsar. However, the banker of the petitioner/accused returned the said cheque with remarks "Drawers Signature differ" vide memo dated 26.05.2015. Thereafter, respondent No.2/complainant served the petitioner/accused with legal notice dated 25.06.2015 through Registered A.D. post, but despite the service of legal notice, petitioner/accused has failed to make the payment to respondent No.2/complainant. Hence, the present complaint.

4. The petitioner was convicted and sentenced vide judgment and order of sentence dated 14.07.2017 passed by learned trial Court, which have also been upheld by learned lower Appellate Court vide judgment dated 19.08.2019.

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 two years along with default mechanism. Learned counsel submits that he is not assailing the impugned judgment of conviction dated 19.08.2019 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. He further submits that this Court, vide order dated 09.09.2019, had directed the petitioner to deposit an amount of Rs.70,000/- in favour of respondent No.2/complainant, before the trial Court/Illaq Magistrate. Learned counsel submits that the petitioner has no objection in case the amount deposited by him be released in favour of respondent



No.2/complainant. He submits that the petitioner has undergone a total period of 24 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 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 2015 and the petitioner has been suffering the agony of protracted trial for last more than 09 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 24 days, 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 19.08.2019 passed by the learned Additional Sessions Judge, Amritsar, affirming the judgment of conviction is upheld, however, the order of sentence dated 14.07.2017 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.



(ii) The amount of Rs.70,000/- deposited by the petitioner in compliance of the order passed by this Court on 09.09.2019 be released. The petitioner is directed to appear before the trial Court/Illaqa Magistrate within a period of 02 weeks from today and the learned trial Court/Illaqa Magistrate concerned is directed to hand over the demand draft of Rs.70,000/- to petitioner and he will renew it and furnish a valid demand draft before the Court concerned within a period of two weeks thereafter. The learned trial Court/Illaqa Magistrate concerned is directed to hand over the same to respondent No.2/complainant against a proper receipt within a period of one week thereafter.

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

January 30, 2025
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(HARPREET SINGH BRAR)
JUDGE

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