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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1970-2020 (O & M)
Date of decision: 16.01.2025

BALWINDER SINGH

...PETITIONER

V/S

TINKU BATRA

..RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

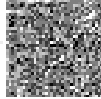
Present: Mr. Harpal Singh, Advocate for
Mr. A.S. Khosa, ADvocate for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision petition has been preferred against the judgment dated 12.08.2024 passed by learned Sessions Judge, Fazilka, vide which, judgment of conviction and order on quantum of sentence dated 18.11.2023 passed by learned Additional Chief Judicial Magistrate, Fazilka 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	Simple Imprisonment for one year with a compensation of Rs.5,00,000/- in default of payment of compensation to undergo simple imprisonment for 02 months.

3. Complainant has filed the present complaint with the averments that accused had friendly relations with the complainant and he borrowed Rs.2,50,000/- as temporary loan and in order to discharge legal liability, accused issued cheque No. 061115 dated 15.02.2019 in the sum of Rs. 2,50,000/- in favour of complainant but the said cheque was dishonoured vide memo dated 15.02.2019 with remarks "Account Closed". Despite issuance of



legal notice dated 20.02.2019 accused did not make the payment. Hence the present complaint.

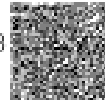
4. The petitioner was convicted and sentenced vide judgment dated 18.11.2023 passed by learned trial Court, which has also been upheld by learned lower Appellate Court vide judgment dated 12.08.2024.

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 18.11.2023 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 month and 24 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

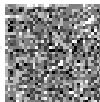


arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Ravada 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 2019 and the petitioner has been suffering the agony of protracted trial for last about 6 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 month and 24 days, including remission out of total sentence of one year, 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 12.08.2024 passed by the learned Sessions Judge, Fazilka, affirming the judgment of conviction is upheld, however, the order of sentence dated 18.11.2023 is modified to the extent that the sentence of rigorous imprisonment for one year along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him. 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 16, 2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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