



with the promise to be repaid after four months, however, on being asked for payment he delayed the payment on one pretext or other. Subsequently, a cheque bearing No.176723 with the Account No.48880 dated 25.11.2009 was issued in his favour, however, with the request not to deposit the same into Bank. Thereafter, even after expiry of two months, when, no payment was made by the borrower, the said cheque was presented for encashment in the Bank on 6.2.2010. The cheque got dishonored with the return memo mentioning that "no such account". On being inquired, Naresh assured that he himself was the Account holder, however, when subsequently, he obtained the information under RTI Act from the concerned Bank i.e. Central Bank of India regarding the Account holder and Cheque, it was revealed that the said cheque was issued by the Bank to one Jagdish Kumar and the correct Account number of the said account number was 1189906556. Thereafter, Subhash Arora made request to Naresh to repay his loan and he was asked to wait for three months and thereafter, when Naresh Kumar finally refused to repay the amount, complaint was moved by Subhash Arora to police against Naresh as well as Jagdish, who had cheated him and had committed forgery. On the basis of said complaint, formal FIR under Section 420,406,467,468,471 of IPC was registered.

4. The petitioner was convicted and sentenced vide judgment of conviction dated 22.09.2016 and order of sentence dated 28.09.2016 passed by learned trial Court, which have also been upheld by learned lower Appellate Court vide judgment dated 27.08.2019.

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 27.08.2019 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. Petitioner has undergone a total custody period of 05 months and 03 days, including custody after conviction.

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 FIR in the present case was lodged on 29.06.2011 and the petitioner has been suffering the agony of protracted trial for the last more than 13 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 05 months and 03 days, including custody after conviction, 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 27.08.2019 passed by the learned Additional Sessions Judge, Faridabad, affirming the judgment of conviction dated 22.09.2016 is upheld, however, the order of sentence dated 28.09.2016 is modified to the extent that the



sentence of simple imprisonment for one year along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs.2,000/- imposed upon the petitioner is enhanced to Rs.10,000/-. The petitioner is directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month. Fine amount already deposited, if any, be adjusted.

February 13, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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