

**CRR-3525-2019 (O&M)****1****256****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRR-3525-2019 (O&M)****Date of Decision: 04.02.2025****VISHVA NATH****...Petitioner****Versus****VEENA KUMARI AND ANOTHER****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Pawan K. Sharma, Advocate
for the petitioner.

None for respondent No. 1.

Mr. P.S. Paul, Addl. PP UT Chandigarh for respondent No. 2.

*********Harpreet Singh Brar, J. (Oral)**

1. Present revision petition has been preferred by the petitioner against the judgment dated 13.12.2019 passed by learned Additional Sessions Judge, Chandigarh vide which judgment of conviction and order on quantum of sentence dated 14.02.2018 passed by learned Judicial Magistrate Ist Class, Chandigarh have been upheld, vide which petitioner has been convicted under Section 138 of Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for one year and directed to pay compensation to the tune of Rs. 3,65,000/- to the complainant.

2. The brief facts of the present complaint are that the accused-petitioner alongwith his family members had been residing adjoining to the house of the complainant for the last 22/23 years and had developed good relations with the complainant. In the month of June, 2014 the petitioner and his wife approached the complainant and her son Munish Kumar and told them that his sister had filed a court case, claiming herself to be the owner of house and

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now the matter has been settled between them, but they require Rs.7 lakh for settlement. The complainant and her son believed the version of petitioner and also due to old relations, gave an amount of Rs.3,01,000/- to the petitioner through Cheques in the name of his wife as the petitioner has stated that the Cheques be issued in the name of his wife and paid Rs.2 lakh in cash on different dates to the wife of the petitioner for the period from June, 2014 to September 2014. The petitioner and his wife promised that they would return the amount after selling the said house after settlement with sister of the petitioner. Later on, the complainant came to know that the petitioner was telling lie as the sister of the petitioner won the case and obtained possession through court. Thereafter, the complainant and her son approached the petitioner and his wife to return the money but they put of the matter on one pretext or the other. Ultimately, with the intervention of respectables, the petitioner in the month of June, 2015 issued one Cheque bearing No.859933 dated 30.06.2015 for an amount of Rs.3,65,000/- drawn at State Bank of India in favour of complainant and another Cheque bearing No.037110 dated 30.6.2015 for an amount of Rs.2,00,000/- drawn at Union Bank of India issued in favour of complainant by the wife of the petitioner being their legal liability and they assured that the Cheques on presentation shall be encashed. The complainant presented the Cheque No.859933 for encashment to her bank but the same was returned back dishonoured with the remarks of "Payment stopped by drawer" vide memo dated 07.07.2015. Ultimately, the complainant got issued a legal notice dated 20.07.2015 upon the petitioner, but in vain. Hence a complaint was instituted by the complainant.

3. Learned trial Court after assessing the material on record convicted

the petitioner under Section 138 of Negotiable Instruments Act and sentenced



him to undergo rigorous imprisonment for one year along and he was directed to pay compensation of Rs. 3,65,000/- to the complainant. Appeal filed against the said judgment of conviction and order of sentence was dismissed by learned Lower Appellate Court.

4. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 13.12.2019 passed by learned Additional Sessions Judge, Chandigarh on merits and restricts his prayer to modification of the order on quantum of sentence dated 14.02.2018 to that of sentence already undergone by the petitioner as he has already undergone a period of 03 months and 02 days out of total sentence of one year awarded to him and he is not involved in any other case.

5. Per contra, learned State counsel 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. However, he could not controvert the fact that petitioner is not involved in any other case.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. 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 com-



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.

8. A perusal of the judgment of conviction passed by the learned lower Appellate Court indicates no perversity in its findings and the said judgment 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.

9. Perusal of record indicates that complaint (supra) was registered in the year 2015 and the petitioner has been suffering the agony of trial since the last 09 years. As per the custody certificate, the petitioner has undergone total sentence of 03 months and 02 days, out of rigorous sentence of one year awarded to him and he is not involved in any other case.

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10. 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.

11. Consequently, the present petition is disposed of in the following terms:-

(i) The judgment dated 13.12.2019 passed by the learned Additional Sessions Judge, Chandigarh upholding the judgment of conviction dated 14.02.2018 passed by learned Judicial Magistrate Ist Class, Chandigarh is upheld, however, the order of sentence dated 14.02.2018 is modified to the extent that the sentence of rigorous imprisonment for one year 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.

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

(HARPREET SINGH BRAR)
JUDGE

04.02.2025*Ajay Goswami*

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>