HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Revision Petition No. 1235/2023

Chandershekhar S/o Ladu Lal, Aged About 37 Years, R/o Tilak Nagar, Police Station Bheemgunj, District Bhilwara. (Lodged At District Jail, Bhilwara)

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Chetan S/o Ramprashad, R/o Q-34, Ajadnagar, Police Station Pratap Nagar, District Bhilwara.

----Respondents

For Petitioner(s)	:	Mr. Bharat Gurjar
For Respondent(s)	:	Mr. Narendra Gehlot, PP assisted by Mr. Omprakash Choudhary

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HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

13/02/2025

Instant revision petition has been filed by the petitioner challenging the judgment dated 15.05.2023 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Bhilwara (hereinafter referred to as 'the appellate court') in Criminal Appeal No.46/2020 by which the appellate court dismissed the appeal and upheld the judgment dated 05.08.2019 passed by the learned Special Judicial Magistrate (NI Act) Cases No.2, Bhilwara (hereinafter referred to as 'the trial court') in Regular Criminal Case No.1516/2016 whereby, the learned trial court convicted the present petitioner for offence under Section 138 of NI Act and sentenced him to undergo One year's SI along with fine of

Rs.1,50,000/- and in default of payment of fine, to further undergo three months' SI.

Briefly stated, the facts of the case are that the petitioner took a loan of some amount from the complainant/respondent No.2 and in lieu thereof, the petitioner had given two cheques bearing No.047733 amounting to Rs.70,000/- and No.047735 amounting to Rs.48,000/- of Urban Cooperative Bank Limited, Branch Bada Mandir Purani Dhanamandi, District Bhilwara to the complainant. On presentation, the said cheque was returned as dishonoured by the Bank due to insufficient funds in the account. The complainant served a legal notice upon the petitioner through his advocate and demanded the amount of cheque but the petitioner did not pay any amount to the complainant.

On the basis of the above complaint, the learned trial court took cognizance in the matter and ultimately framed charge for offence under Section 138 NI Act against the petitioner. The petitioner denied the charges and claimed for trial. During trial the complainant examined himself as witness and got exhibited certain documents. Thereafter statement of the petitioner under Section 313 Cr.P.C. was recorded.

After conclusion of the trial, the learned trial court vide judgment and order dated 05.08.2019 convicted the accused-petitioner for offence under Section 138 of NI Act.

Aggrieved by the judgment and order dated 05.08.2019, passed by the learned trial court, an appeal was preferred before the learned appellate court, which came to be dismissed vide judgment dated 15.05.2023. Hence, this revision.

Learned counsel for the petitioner submits that the suspension of sentence application of the petitioner has already allowed by this Court vide order dated 07.10.2023, but he did not submit the bail bond. At the threshold, learned counsel for the petitioner submits that he does not challenge the finding of conviction but since the accused petitioner has served total sentence and now he is serving default sentence of three months, therefore, it is prayed that the default sentence awarded to the petitioner for the aforesaid offence may be reduced to the period already undergone by him.

Learned Public Prosecutor has opposed the submissions made by the learned counsel for the petitioner and submitted that there is neither any occasion to interfere with the sentence awarded to the accused petitioner nor any compassion or sympathy is called for in the said case.

Heard the learned counsel for the parties and perused the judgments passed by both the courts below regarding conviction of the accused-petitioner.

It is not disputed that the accused petitioner was sentenced to a period of one year’s simple imprisonment, however, he served the sentence of one year and now he is serving default sentence, so also suffered the agony and trauma of protracted trial. Thus, looking to the over-all circumstances and the fact that he has remained behind the bars for more than one year, it will be just and proper if the default sentence awarded by the trial court for offence under Section 138 of NI Act and affirmed by the appellate court is reduced to the period already undergone by him.

Accordingly, the revision petition is partly allowed. While maintaining the petitioner's conviction and sentence for offence under Section 138 of NI Act, the default sentence awarded to him is hereby reduced to the period already undergone by him. So far as the compensation amount is concerned, the respondent No.2-complainant shall be free to initiate proceedings for recovery of the compensation amount before the trial court. The accused-petitioner is in custody and shall be released forthwith, if not required in any other case.

Application for suspension of sentence is already decided.

Record of the case, if received, be sent back forthwith.

(MANOJ KUMAR GARG),J

282-GKaviya/-