

**CRR-1468-2013 (O&M)****1****246****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRR-1468-2013 (O&M)****Date of Decision: 10.02.2025****SHAKIL DEV PODDAR****...Petitioner****Versus****M/S GUPTA JUTE AGENCY****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. R.S. Sidhu, Advocate
for the petitioner.

None for the respondent.

Mr. Nitesh Sharma, DAG Punjab.

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

1. Present revision petition has been preferred by the petitioner against the judgment dated 18.02.2013 passed by learned Additional Sessions Judge, Bathinda vide which judgment of conviction and order on quantum of sentence dated 28.11.2011 passed by learned Sub Divisional Judicial Magistrate, Phul, have been upheld, whereby petitioner has been convicted under Section 138 of Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for two years and he was directed to pay fine of Rs. 1,000/- with default mechanism.

2. Respondent/complainant filed complaint on 09.03.2009 against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as the NI Act) on the allegations that the respondent firm is sole proprietorship of Rajinder Kumar and is doing the business at Rampura Phul. Petitioner purchased Bardana from the respondent on 17.11.2008 vide bills Nos. 233, 234, 235 on 17.11.2008, vide bills No. 236, 237 on 19.11.2008, vide bill No. 240 on 23.11.2008, vide bill No. 243 on 26.11.2008 and vide bill No.247 on 08.12.2008 on credit basis. Rs.2,47,624/- were outstanding against the



petitioner, who had agreed to pay interest @ 1.50% p.m. on the outstanding amount. In order to discharge his said legal liability, petitioner being proprietor of firm issued cheque No.363428 dated 26.12.2008 for Rs.2,50,000/- drawn on account No.0454008700006769 of Punjab National Bank, Tarn Taran in favour of the respondent. But on presentation with the drawee bank through State Bank of India, Rampura Phul on 02.01.2009 this cheque was dishonoured due to insufficient funds in account of the petitioner. At the asking of the petitioner, the respondent again presented the said cheque for encashment through State Bank of India, Rampura Phul on 13.01.2009. But it was again dishonoured by the drawee bank due to insufficient funds in account of the petitioner. The respondent served a legal notice through his counsel, upon the petitioner on 27.01.2009 asking him to make payment of amount of the cheque within 15 days from receipt of the notice but to no effect. Hence, this complaint.

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 two years and fine of Rs. 1,000/- was imposed upon him with default mechanism. 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 18.02.2013 passed by learned Additional Sessions Judge, Bathinda on merits and restricts his prayer to modification of the order of quantum of sentence dated 28.11.2011 to that of sentence already undergone by the petitioner as he has already undergone a period of 01 year 01 month and 04 days and not involved in any other case.

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5. I have heard learned counsel for the petitioner and perused the record with his able assistance.

6. In **Deo Narain Mandal v. State 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.

7. 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



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merits, rather he has restricted his prayer only qua modification of quantum of sentence.

8. Perusal of record indicates that complaint(supra) was filed on 09.03.2009 and the petitioner has been suffering the agony of trial since the last about 16 years. As per the custody certificate, the petitioner has undergone total sentence of 01 year 01 month and 04 days, out of rigorous sentence of two years awarded to him and he is not involved in any other case.

9. 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.

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

(i) The judgment dated 18.02.2013 passed by the learned Additional Sessions Judge, Bathinda upholding the judgment of conviction dated 28.11.2011 passed by learned Sub Divisional Judicial Magistrate, Phul is upheld, however, the order of sentence dated 28.11.2011 is modified to the extent that the sentence of rigorous imprisonment for two years awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs. 1,000/- imposed upon the petitioner is enhanced to Rs. 5,000/-. 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 simple imprisonment for one month.

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

(HARPREET SINGH BRAR)
JUDGE

10.02.2025

Ajay Goswami

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