

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-61-2023 (O&M)**
Date of Decision:01.06.2023

Manoj Kumar Khurana

...Petitioner

Versus

Sanjeev Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Naveen Bawa, Advocate, for the petitioner.

HARKESH MANUJA, J.

1. By way of present revision petition challenge has been made to the impugned judgment dated 29.08.2022 passed by Ld. Addl. Sessions Judge, Ludhiana; whereby the appeal filed by the petitioner against the judgment dated 20.11.2019 passed by the Ld. Judicial Magistrate 1st Grade, Ludhiana vide which the petitioner was convicted for rigorous imprisonment of 02 years under Section 138 of NI Act, 1881, has been dismissed.

2. Brief facts of the case are that the accused/petitioner allegedly borrowed a sum of Rs.3,00,000/ from complainant/respondent as friendly loan; in order to repay the same, he issued cheque bearing no. 077946 dated 12.07.2014 which was dishonored vide memo dated 15.07.2014 with remarks "Account Closed". Thereafter, complainant filed a complaint bearing No.1150 dated 23.08.2014 against petitioner and Ld. JMJC, Ludhiana vide its judgment dated 26.07.2016 convicted him and sentenced to undergo R.I for one year along with fine of Rs. 2000/-. The petitioner preferred

the matter was amicably compromised between the parties. In pursuance thereof, the petitioner handed over a cheque bearing No.027614 dated 11.03.2017 for an amount of Rs.3,00,000/- drawn on PNB, Moga (cheque in dispute) to the complainant with the assurance that the same will be encashed. The complainant presented the said cheque to his banker; but the same was returned unpaid with cheque returning memo dated 15.03.2017 with endorsement "Funds Insufficient". Thereafter, the complainant served a demand notice upon the petitioner calling upon him to make the payment of cheque in question; but to no effect, which necessitated the filing of complaint wherein the petitioner was summoned to face trial u/s 138 of Negotiable Instrument Act, 1881 (hereinafter referred to as 'the Act').

3. Ld. Trial Court vide judgment dated 20.11.2019, convicted the petitioner under Sections 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay compensation of Rs. 3 lacs and in default to further undergo imprisonment of six months. Learned trial court while convicting the petitioner primarily relied upon statement under Section 313 Cr.P.C. and his cross-examination. Relevant para of the judgment by the trial court is reproduced here under:-

"Even in his plea taken in the statement recorded under Section 313 of Cr.PC, and during his cross-examination the accused has admitted the case of the complainant. The accused has admitted the factum of earlier complaint filed against him as well as passing of judgment of conviction Ex. C7 against him. He further admitted that during the pendency of appeal qua the above said judgment Ex C7, he entered into compromise with the complainant and got recorded statement Ex. C6D before the Appellate Court. Not

only this he also admitted the fact that cheque Ex C1 was executed and signed by him and the same was handed over to the complainant to discharge his legal liability of Rs. 3,00,000-as settled in the Appellate Court This fact is also clear from art/This attested copy of order of Court dated 11.02.1017 Ex C6. In this way, umpteen of admissions have been made by the accused corroborating the case of the complainant. Though the accused claimed that he has repaid the amount of Rs. 3 lakhs to the complainant on 10-03-2017 in the presence of his two friends and his mother. However, the accused has failed to examine any of the said persons to prove his said tall claim. ...”

4. Aggrieved against the judgment dated 20.11.2019, petitioner filed appeal in the Court of the learned Additional Sessions Judge, Ludhiana; but the same was dismissed vide impugned judgment dated 29.08.2022. It is pertinent to mention here that after filing of the appeal, neither petitioner; nor his counsel appeared before the Appellate Court and therefore, the judgment was passed in his absence though numerous opportunities were provided to them for their appearance before the Court. The judgment was, however, passed by the first Appellate Court after examining the records which has been impugned by way of present revision petition.

5. Neither in the revision petition; nor at the time of hearing, any submission was made on merit, rather only contention raised was regarding passing of the judgment in the absence of petitioner or his counsel, however, it is required to be noticed that learned Appellate Court vide order dated 05.052022 cancelled bail order of the petitioner on account of non-deposit of 20% of the compensation amount within 60 days resulting into issuance of non-bailable warrants against him.

Though, before this date, his counsel has been appearing but after that no one appeared on his behalf; nor non-bailable warrant could be served upon the petitioner and learned appellate Court after examining the records passed the judgment. Sequence of events vividly show the casual attitude of the petitioner towards the proceeding before the Court.

6. Being fully convinced with the reasoning recorded by the Courts below, this Court was not willing to entertain this petition, in its limited revisional jurisdiction, however, with the only purpose to bring quietus to the litigation in the present case, and on account of submissions made by the learned counsel for the petitioner before this Court that the petitioner was ready and willing to make the payment to the respondent, order dated 10.01.2023 was passed by this Court, and relevant part thereof is reproduced below:

“Learned counsel for the petitioner, on instructions, submits that in order to show his bonafide, the petitioner is ready to pay the cheque amount.

Adjourned to 25.01.2023.

Meanwhile, petitioner may bring a draft of Rs.3 lacs in favour of complainant- respondent Sanjeev Kumar on next date of hearing.

Be shown in the urgent list.”

7. But despite having been granting plenty of opportunities in the shape of adjournments for the only purpose to make arrangements for the funds, petitioner has not been able to make any payment despite of passage of approximately 6 months. Conduct of the petitioner before the appellate court as well as before this Court shows that he has scant respect for the proceedings of the court, therefore, no further leniency is required to be shown in this case.

8. Resultant, the revision petition is dismissed.
9. Pending miscellaneous application(s), if any, shall also stand disposed of.

01.06.2023

sanjay

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No