

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

105.

CRR No.301 of 2022 (O&M)

Date of Decision:08.12.2023

Jagdish Kumar

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mukesh Garg, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

Mr. G.S. Bains, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the judgment dated 11.10.2021 passed by the learned Additional Sessions Judge, Patiala whereby the judgment of conviction and order of sentence dated 15.10.2015 passed by the learned Judicial Magistrate 1st Class, Patiala vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) and sentenced to undergo rigorous imprisonment for a period of 1 year 6 months and compensation of ₹2 lakhs, was upheld.

2. In brief, the facts are that the petitioner herein approached the respondent to give a friendly loan of ₹9 lakhs for his personal business in the month of August, 2012 with an assurance to return the same amount within one year. In lieu thereof, petitioner issued a post-dated cheque bearing No.0119094 dated 04.09.2013 for a sum of ₹9,20,000/- drawn at Punjab National Bank, The Mall,

Patiala in the name of the respondent. After one year, respondent presented the said cheque for encashment, however, it was returned vide memo dated 06.09.2013 with remarks 'fund insufficient'. Thereafter, a demand notice dated 09.09.2013 was sent to the petitioner through registered post by the respondent calling upon him to make payment of the cheque amount but he failed to do so. It is in this background, the present complaint was filed.

3. After appreciating the evidence led by both the parties, the learned Judicial Magistrate 1st Class, Patiala vide impugned judgment/order convicted the petitioner under Section 138 of the NI Act and sentenced him to undergo rigorous imprisonment for a period of 1 year 6 months and a compensation of ₹2 lakhs was awarded to the respondent, subject to result of appeal and revision, if any, preferred by him. The appeal preferred against the aforesaid judgment/order was dismissed by the learned Additional Sessions Judge, Patiala. Hence, the petitioner is in revision before this Court.

4. Learned counsel appearing for the petitioner contends that both the petitioner and the respondent No.2 were engaged in the same business of manufacturing and selling *juttis* and belonged to the same area in Rajasthan. The petitioner filed a civil suit against respondent No.2 and therefore, the present complaint was filed in retaliation to the said civil suit preferred by the petitioner against him, which was decided on 07.01.2019 and appeal preferred against the same is pending consideration before the lower Appellate Court. The petitioner had taken loan from the Red Line Telecom Top Khana Mor, Patiala, whose owner was Pappu Gahlot and gave three signed blank cheques as security to him. The respondent No.2 purchased one of the said cheques from him in order to falsely implicate the petitioner. It is further contended that the trial Court erroneously discarded the testimony of DW-2 Balwinder Singh, Tax Assistant,

who proved the income tax returns of the relevant period to indicate that respondent was not even in the financial capacity to give a loan of ₹9 lakhs.

5. Per contra, learned State counsel and the counsel appearing for respondent No.2 submit that the learned trial Court after appreciation of evidence led by the parties and the material available on record, has rightly convicted and sentenced the petitioner as mentioned herein above and there is no illegality or perversity in the judgment rendered by it. Moreover, the appeal preferred against the said judgment has also been dismissed by the learned lower Appellate Court.

6. I have heard learned counsel for the parties and perused the paper book with their able assistance. With the consent of parties, main revision petition is taken up for final disposal.

7. On 08.03.2022, when the case came up for hearing, counsel for the petitioner submitted that there were chances of amicable settlement and at one point of time the matter had been orally settled for an amount of ₹4 lakhs and sought a short adjournment to seek instructions. Thereafter, on 07.04.2022, in order to prove his *bona fide*, the petitioner brought a demand draft of ₹2 lakhs, which was deposited with the office of Registrar General in order to enable the parties to come to an amicable settlement. The petitioner was ordered to be released on interim bail and the parties were directed to appear before the Mediation and Conciliation Centre attached to this Court. However, since no one had put in appearance on behalf of the petitioner, this Court vide order dated 12.12.2022 cancelled the interim bail granted to the petitioner and the concerned Chief Judicial Magistrate was directed to issue arrest warrants pursuant to judgment dated 11.10.2021 passed by the learned Additional Sessions Judge, Patiala. Thereafter, on 25.01.2023, counsel for the petitioner on direction of this Court given vide order dated 11.01.2023, produced the copy of demand draft

dated 24.01.2023 for an amount of ₹2 lakhs and the matter was again referred to the Mediation and Conciliation Centre of this Court and to facilitate the mediation proceedings, arrest of the petitioner was stayed till the next date of hearing. Thereafter, the matter was adjourned to await the report of the mediator. On 27.04.2023, on receipt of report of mediator, this Court observed that in the second round of mediation that lasted for more than 9 hours, though the complainant was still ready to compromise the matter, the petitioner was not ready to offer anything beyond ₹1,50,000/- against the cheque amount of ₹9 lakhs and therefore, the matter was sent back to this Court. In the court, learned counsel for the petitioner submitted that the petitioner was willing to pay an amount of ₹3 lakhs, which was not acceptable to respondent No.2 and keeping in view the said fact, the concerned Chief Judicial Magistrate was directed to comply with the order dated 12.12.2022.

8. On merits, the arguments raised by the counsel appearing for the petitioner that the present complaint was filed in retaliation to the civil suit filed by him against respondent No.2, as respondent No.2 did not have the financial capacity to give loan of ₹9 lakhs and the cheque in question was procured by him fraudulently from one Pappu Gahlot have no merit. Admittedly, the said civil suit was filed by the petitioner seeking a declaration to the effect that the earnest money paid by respondent No.2 in view of the agreement to sell dated 05.12.2012 executed between the petitioner and respondent No.2 for sale of House No.B-38/56, Top Khana Mor, Patiala be forfeited as the said agreement has become redundant. It is also admitted fact that respondent No.2 had paid ₹5,20,000/- to the petitioner on 05.12.2012 and subsequently, paid ₹2 lakhs, as is evident from the inquiry report submitted by the DSP (City), Patiala to SSP, Patiala on the complaint filed by the petitioner where he himself admitted that at

the time of execution of agreement to sell, he had taken ₹7,20,000/- but now the respondent No.2 is demanding ₹9,20,000/-. Therefore, the argument raised by the counsel appearing for the petitioner that respondent No.2 did not have the financial capacity to extend loan of ₹9 lakhs is not sustainable. Further, though counsel for the petitioner argued that the petitioner gave blank signed cheques to one Pappu Gahlot from whom he took loan earlier as security and respondent No.2 procured one of said cheque from Pappu Gahlot to entangle him in a false case but the said Pappu Gahlot was not examined for the reasons best known to the petitioner.

9. In view of the aforesaid facts and circumstances, judgment dated 11.10.2021 passed by the learned Additional Sessions Judge, Patiala is upheld and consequently, the revision petition is dismissed. The concerned Chief Judicial Magistrate is directed to take recourse to the process of law to take the petitioner into custody in pursuance of judgment 11.10.2021 passed by the learned Additional Sessions Judge, Patiala.

10. Misc. applications pending, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

December 08, 2023

Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No