

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

113

CRR-518-2023 (O&M)
Date of decision: 19.04.2023

Banta Ram

.....Petitioner

Versus

Dalbir Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Paramjit Singh Jammu, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is impugning the judgment of conviction dated 12.11.2018 along with order of sentence dated 13.11.2018 which was passed by learned Judicial Magistrate 1st Class, Sirsa in Criminal Complaint No.NI 1304 of 2013 dated 29.08.2012 titled as 'Dalbir Singh Vs. Banta Ram' under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') vide which he was convicted and sentenced to undergo SI for 01 year under Section 138 of the NI Act and further was directed to pay compensation to the tune of ₹10,00,000/- i.e. the cheque amount to respondent No.1/complainant within two months from the date of order.

2. The appeal preferred by the petitioner against the aforesaid judgment before the learned Additional Sessions Judge, Sirsa was further dismissed on 05.01.2023.

3. Learned counsel for the petitioner submits that the Courts below had committed a grave error in overlooking the fact that the complainant had miserably failed to prove the source from where he

had got a sum of ₹10,00,000/- for advancing it as a loan to the petitioner. It has been further argued that though the complainant deposed that he had advanced the sum in question to the petitioner by selling his plot, however, a perusal of the complaint clearly reveals that there was complete silence qua the source from which the money had been raised by the complainant to be then advanced it to the petitioner. It was submitted that had the complainant indeed sold off some property the least he could have done was to produce the requisite sale documents which admittedly was not done in the case in hand. Learned counsel has further submitted that the complainant had not even examined any witness to prove the advancement of loan in question to the petitioner. Learned counsel submitted that in fact a concocted version had been brought forth during the course of trial by the complainant that the parties were closely related because while filing the complaint in question he had nowhere disclosed about the parties being closely related and had rather just stated that they were on friendly terms. Learned counsel has, therefore, vehemently argued that in the aforementioned facts and circumstances when neither the financial capacity of the complainant nor any proof with respect to advancing the loan in question had been proved by way of any cogent evidence, the Court below had erroneously convicted the petitioner for offence under Section 138 of the NI Act.

4. I have heard learned counsel and perused the relevant material on record..

5. This Court does not find any merit in the submissions made by learned counsel that the complainant had failed to disclose the

source from where he had arranged the sum for the loan in question and had not proved his financial capacity. In the light of the settled law a complainant cannot be expected to at the outset lead evidence to show his financial capacity to extend the loan in question. It is only when a specific case is set up during trial by the accused and a challenge is laid to the financial capacity of the complainant, it is then that the burden of proof shifts to the complainant to rebut the same and to lead evidence qua his financial capacity. A perusal of the material on record reveals that it had nowhere been suggested by the petitioner to the complainant, during his cross-examination, that the complainant did not possess the financial capacity to advance the loan in question. Still further, a perusal of the file shows that the specific case of the petitioner was that he had been falsely implicated in the case in hand and his signatures had been obtained on a blank cheque, which had later been misused by the complainant. It would also be most pertinent to observe here that it is a matter of record that a compromise had been arrived at between the parties after they had been referred for mediation, by the Trial Court below. On receipt of report from the Mediation and Conciliation Centre, the petitioner had suffered a statement before the Trial Court on 20.02.2016 that he would make the payment of the cheque amount by the next date of hearing. Furthermore, from a perusal of the record it transpires that DW2 Vinod had stated during his cross-examination that after 06 months of the case, the petitioner had also admitted to him that he had entered into a compromise with the complainant in the case in hand. It would be still further pertinent to notice that the compromise which was effected between the parties before the Mediation and

Conciliation Centre remained unchallenged. Hence, once the petitioner had himself admitted his liability before the Court below, his pleas assailing the findings of the Courts below cannot be sustained.

6. As a sequel to the above, this Court does not find any merit in the instant revision petition which stands dismissed accordingly.

19.04.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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