IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-878-2021(O&M)
Date of Decision: May 17, 2023

SANDEEP MEHRA ALIAS BUNTY .... Petitioners

Versus

RAJESH JAIN .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dharambir Bhargava, Advocate for petitioner.

Mr.Rajesh Jain-respondent-in-person.

HARKESH MANUJA, J. (ORAL)

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1. By way of present revision petition challenge has been made to the judgment of conviction and the order of sentence dated 04.06.2019 passed by the Court of JMIC, Jind whereby the petitioner was convicted under Section 138 of Negotiable Instruments Act, 1881 and was awarded sentence for a period of six months besides having been directed to pay compensation to the tune of Rs.46,000/- as well as the judgment dated 09.08.2021 passed by the Court of Addl. Sessions Judge, Jind upholding the conviction while reducing the sentence from six months to three months.

2. Briefly stating, on account of dishonour of cheque bearing No.979780 dated 10.01.2017 amounting to Rs.46,000/-, a complaint came to be filed under Section 138 of NI Act at the instance of respondent. Upon trial, the petitioner was convicted vide judgment dated 04.06.2019 under Section 138 of NI Act and sentenced in the aforesaid manner. Aggrieved thereof, the petitioner filed appeal, the First Appellate Court vide judgment dated 09.08.2021 upheld the conviction, though reduced the sentence from six months to three months besides upholding the amount of compensation as well as

the default sentence.

3. Impugning the aforesaid judgments dated 04.06.2019 and 09.08.2021, learned counsel for petitioner vehemently contends that during trial the respondent-complainant was neither able to prove his financial capacity nor the complaint itself was maintainable at his instance as he was not having any money lender licence as required under Section 3 of the Punjab Registration of Money Lender's Act, 1938. In support he refers to Judgment passed by Hon'ble the Supreme Court in **"Basalingappa Vs. Mudibasappa 2019(2) Civil Court Cases 0518"** and Hon'ble Bombay High Court in **"Smt. Nanda Vs. Nandkishor Criminal appeal No.467/2009"** decided on 12.01.2010.

4. On the other hand, respondent who is appearing in person supports the findings recorded by the Courts below and submits that the conviction has been recorded against the petitioner upon due appreciation of evidence available on record. The respondent also relies upon decision dated 29.05.2017 passed by Hon'ble Delhi High Court in case of **"Rajat Jain & Anr. Vs. Neeta Gupta RSA Nos.153-2017"** so as to contend that the respondent who lend money to the petitioner as a casual loan was not a money lender for the purpose of Section 3 of Punjab Registration of Money Lender's Act, 1938.

5. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find any substance in the submissions made on behalf of the petitioner.

6. As regards the plea raised by the petitioner of respondent being a money lender and the complaint not maintainable in the absence of licence, the same is not made out from the facts and documents available on record. Burden to prove this plea always remained upon the petitioner regarding which he completely failed. No evidence at all has been brought on record from the side of petitioner about respondent indulging in business of money lending. On the other hand it has not been disputed that the respondent is a qualified orthopedic surgeon and in private practice who gave money to the petitioner on account of having cordial friendly relations with him as well as his parents and thus can't be termed to be a money lender in the absence of proof of various continuous such transactions. The aforesaid view is even derived from the observations made by this Court in case "Takhat Raj Singh Vs. Shaminder Singh" 2009(5) RCR(Crl.)689. Relevant portion from Para 14 is reproduced hereunder:-

> "A man does not become a money lender within the meaning of Section 2(9) of the Punjab Registration of Money Lender's Act by reason of occasional loans to relations, friends or acquaintances, whether interest be charged or not. Nor does a man become a money lender, merely because, he may upon one or several isolated occasions lend money to a stranger. There must be business of money lending and the word "business" imports the notion of system, repetition and continuity. An element of continuity and habit is, therefore, essential to constitute the exercise of a provision or business. Speaking generally, a man who carries on a money lending business is one, who is ready and willing to lend to all and sundry provided that they from his stand point are eligible. Not every man who lends money at interest carries on the business of money lending. There must be more than occasional and disconnected loans. No specific formula can define or demarcate a

> money lender and one who is not. Each case must depend on its own peculiar features. It is ever a question of degree. "

Similar view can also be traced out from the judgment relied upon by the respondent in case of **Rajat Jain and Another (Supra).**

7. Perusal of judgments passed by the Courts below show that the petitioner while appearing as DW1 in his cross-examination admitted the factum of having taken loan from the respondent-complainant, in view thereof, there was no requirement on the part of respondent-complainant to have proved his financial capacity as regards lending of amount to petitioner. Rather than having rebutted the statutory legal presumption attached to the cheque in question as provided under Section 139 of NI Act, 1881, the petitioner went on to admit the factum of having borrowed money from the respondent-complainant.

8. In view of the discussions made herein-above I do not find any illegality or perversity in the findings of Courts below and even the judgments as cited by the petitioner do not apply to the facts and circumstances of the present case as in **Smt. Nanda case** (Supra) the complainant was admittedly a money lender whereas the same has been seriously disputed in the present case. Accordingly, the present revision petition is dismissed with no order as to costs.

9. Pending applications, if any, shall also stand disposed of.

17.05.2023 **(HARKESH MANUJA)**
Tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*