

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

238/A

CRM-A-166-MA-2018

Date of Decision: September 25, 2018

Hardev Singh

.....Petitioner(s)

versus

Bhagwan Dass and another

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Manbir Singh Batth, Advocate
for the petitioner.

Mr. Jasdeep Singh Walia, Sr. DAG, Punjab.

Sudhir Mittal, J. (Oral)

The appellant is the complainant. He had preferred a complaint under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') against the respondent, which was decided in his favour and the respondent was convicted and sentenced to undergo RI for a period of two years and to pay fine of Rs.10,000/-, in default of payment of which, to further undergo SI for one month. The respondent challenged his conviction by way of an appeal and the same was accepted vide judgment dated 31.10.2017 by Additional Sessions Judge, SBS Nagar and he was acquitted.

2. Learned counsel for the appellant submits that the learned Additional Sessions Judge, SBS Nagar, has erred in acquitting the respondent because the respondent has admitted financial dealing with the appellant. He has also admitted his signature on the cheque in dispute and thus, a presumption arose in favour of the appellant under section 139 of the Act, which has remained un-rebutted.

3. A perusal of the impugned judgment shows that upon examination of the cheque in dispute, learned Additional Sessions Judge, SBS Nagar, came to the conclusion that the same was written in three different inks and is in different handwritings. Thus, it has accepted the contention of the accused/respondent that a blank cheque given by him had been misused by the appellant. This finding is also supported by the oral evidence of the complainant/appellant, wherein he had stated that the cheque was complete in all respects and filled in when it was received by him. Reference has also been made to the statement of the one Raj Narinder Singh, Ex. D-2, in which the said witness had stated that he was known to the complainant-appellant since childhood. The case of the complainant-appellant was that said Raj Narinder Singh is not known to him and on the basis of Ex. D-2, Additional Sessions Judge, SBS Nagar, came to the conclusion that the appellant had made a false statement. Based on these findings, it has been held that the respondent has been able to rebut the presumption under section 139 of the Act. Despite being repeatedly asked to dislodge the aforesaid findings either on fact or on law, learned counsel for the appellant has remained unsuccessful.

4. Thus, there is no merit in this appeal and the same is accordingly dismissed.

September 25 , 2018

*sonia arora***[SUDHIR MITTAL]**
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No