

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AS-65-2015(O&M)

Date of Order:29.11.2019

Jarnail Singh

..Appellant

Versus

Sant Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Swaich, Advocate,
for the appellant.

None for the respondent.

ANIL KSHETARPAL, J(Oral)

This appeal has been filed against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class while dismissing complaint under Section 138 of the Negotiable Instruments Act, 1881.

Complainant-appellant filed complaint with the averments that he agreed to sell immovable property to the respondent by an oral agreement. Sale deed was to be executed on 13.01.2005 for a total sale consideration of Rs.5,00,000/-. It is claimed by the complainant-appellant that Rs.3,00,000/- was paid in cash, whereas a cheque for Rs.2,00,000/- was issued.

Learned Judicial Magistrate on appreciation of evidence has found that Ex.C6, sale deed executed by the appellant does not refer to any payment by cheque. It has been recorded therein that the entire amount has been paid. The endorsement before the Sub-Registrar is also to the same effect. The court has also noticed that the cheque in question was initially

self/bearer cheque but it is claimed that the same was endorsed in favour of the appellant subsequently. Once, in the sale deed (registered) there is no reference to the payment of part of sale consideration through cheque, therefore, the cheque in question cannot be linked to the aforesaid sale considerations.

Learned Judicial Magistrate on appreciation of evidence has come to a conclusion that complainant-appellant has failed to prove its case beyond shadow of reasonable doubt.

Learned counsel for the appellant submitted that as per Section 139 of the Negotiable Instruments Act, 1881, holder of a cheque in due course has a statutory presumption and it is for the accused to rebut the same. He submitted that the accused-respondent has failed and, therefore, the Court has committed error in dismissing the complaint.

Three Judges Bench of the Hon'ble Supreme Court in the case of *Rangappa vs. Sri Mohan, (2010) 11 SCC 441* has dealt with the aforesaid issue in detail and it has been laid down that no doubt initial presumption is in favour of holder of a cheque and reverse onus lies on the accused. However, it is permissible for the accused to point out improbabilities in the evidence led by the prosecution and thereby prove its defence on preponderance of probabilities. It has further been laid down that once on preponderance of probabilities the defence creates doubt, the onus shifts on the complainant to prove its case beyond shadow of reasonable doubt and the protective umbrella of Section 139 of the Negotiable Instruments Act is no more available.

As noticed above, once the appellant has averred that the amount of cheque is part of sale consideration which stands belied from the

reading of registered sale deed, the court has rightly drawn a conclusion which is not proved to be suffering from any substantive error or perversity.

Hence, dismissed.

November 29, 2019
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(ANIL KSHETARPAL)
JUDGE

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