

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1538-MA-2018 (O&M)
Date of Order: 06.09.2019

Gurdeep Singh

..Appellant

Versus

Harpal Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Veneet Sharma, Advocate, for the petitioner.

ANIL KSHETARPAL, J(Oral)

Appeal is against acquittal.

Complaint under Section 138 of the Negotiable Instrument Act was dismissed by the learned trial Court. Cheque in question is of Rs.28,50,000/-. It has come in evidence that that the complainant could not disclose the date, month and year of tendering the amount of loan. No evidence has come on record to prove that the amount of Rs.28,50,000/- was available with the complainant-petitioner. The complainant has deposed that he received the amount after selling certain immovable properties. Certain sale deeds were placed on file, which were executed and registered in the year 2008-2009. Admittedly, no suit for recovery of the amount has been filed by the appellant.

It is well settled that, although, presumption under Section 139 of the Negotiable Instrument Act, 1881 is in favour of holder of the cheque, however, the accused is entitled to rebut that presumption from the evidence produced by the prosecution itself. The presumption under Section 139 of the Negotiable Instrument Act is not with regard to accused being guilty.

The presumption is only with regard to the fact that the cheque was for the discharge, in whole or in part, of any debt or other liability. Such presumption is rebuttable.

In the present case, learned trial Court has taken plausible and reasonable view. Before convicting, the Judicial Magistrate is required to record a finding that the prosecution has proved its case beyond reasonable shadow of doubt.

Keeping in view the aforesaid facts, the present petition is dismissed.

September 06, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No