

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

101

CRM-A-893-MA-2016(O&M)

Date of Order:20.09.2019

Satnam Singh

..Petitioner

Versus

Chetan Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.PPS Tung, Advocate, for
Mr. Gurbir Singh Toor, Advocate,
for the appellant.

Mr. Arnav Sood, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Special leave to appeal has been sought against the judgment of acquittal.

Complaint under Section 138 of the Negotiable Instruments Act was filed by the petitioner claiming that cheque for an amount of Rs.50,500/- has been dishonoured and inspite of demand notice payment has not been made.

Learned Magistrate after examining the evidence has found following reasons to return a finding that rebuttable presumption as available to a holder of a cheque under Section 139 of the Negotiable Instruments Act stands rebutted:-

- (1) Complainant has failed to disclose as to when the loan was extended to the accused;
- (2) There is no document of the loan;
- (3) On bare perusal of the statements of bank account of the complainant, it is apparent that he never had any bank balance beyond Rs.10,000/-

It is the case of the complainant that the loan was given to the accused in the presence of Simaranjit Singh, who has not been examined.

This court has heard learned counsels for the parties at length and with their able assistance gone through the paper book.

Learned counsel for the appellant made sincere attempt to persuade this court to take a different view by referring to Section 139 of the Negotiable Instruments Act and drawing attention of the Court to Ex.C5, which is receipt proving payment of Rs.50,000/- on sale of bufflow from Kulwinder Singh, however, in view of the reasons as noticed above the presumption in favour of the the holder of a cheque stands rebutted.

The complainant has failed to satisfy the conscious of the Court with regard to genuineness of the transaction. The presumption available under Section 139 of the Negotiable Instruments Act can even be rebutted from the evidence of the complainant. This aspect has been examined by the Hon'ble Supreme Court in the case of *Rangappa vs. Sri Mohan, (2010) 11 SCC, 441.*

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

September 20, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No