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

**CRM-A-2683-MA-2017 (O&M)
Date of Decision:24.09.2019**

Jitender Chawla

...Appellant

Versus

Devki Nandan ...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Aazam Khan, Advocate for
Mr.Amit Arora, Advocate for the appellant.

ANIL KSHETARPAL, J.

Special leave to appeal has been sought under Section 378(4) of the Code of Criminal Procedure against the judgment of acquittal passed by the learned Judicial Magistrate 1st Class, while deciding criminal complaint under Section 138 of the Negotiable Instrument Act, 1881 (for short `the Act of 1881).

The complainant-appellant claimed that he had extended friendly loan of Rs.3,08,000/- to the accused in April 2015 and for refund thereof, cheque dated 31.07.2015 was issued by the accused which on presentation was returned with the remarks “account closed”. In spite of notice, the amount has not been paid. Hence, the complaint.

The complainant appeared in the witness box as CW-1. He produced the original cheque, return memo, legal notice and postal receipt thereof and closed evidence. Notice of accusation was served and an application under Section 145(2) of the Act of 1881 was filed on behalf of the accused, seeking to recall the complainant for his cross-examination which was allowed. Counsel for the accused cross-examined the complainant. In defence, the respondent filed an affidavit Ex.DW1/A, in lieu of examination-in-chief.

On appreciation of evidence, the learned Judicial Magistrate found that presumption under Sections 118 and 139 of the Act of 1881 stands rebutted. It has been noticed that the complainant admits that he is 32 years old, whereas accused is 50-60 years old. He does not know the name of the father of the accused. He admits that he filed income tax return but the amount in question has not been reflected in his income tax return. He claims that he had taken a loan from his father. He is unable to provide any written proof of advancement of the loan amount. He failed to disclose for what purpose the alleged loan was advanced. The exact date on which the loan was advanced has also not been given.

In view of the aforesaid finding, correctness whereof is not being disputed, this Court, while entertaining application for special leave to appeal does not find any good ground to interfere. The presumptions in favour of holder of a cheque are no doubt statutory presumptions but rebuttable. The aforesaid presumptions can be even rebutted from the evidence of the complainant which in the present case has been successfully rebutted by the accused.

Dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

24.09.2019 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No