

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1989-2016(O&M)

Date of decision: 06.12.2019

Jagdish Sharma @ Jagdish Kumar

.....Petitioner

Versus

Varinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.T.S.Gujral, Advocate for the petitioner

Mr.Rishu Mahajan, Advocate for the respondent

ANIL KSHETARPAL, J. (ORAL)

Only question which needs determination in this revision petition is as to whether the petitioner-convict is holder of Bank account no. 52368 in Union Bank of India, Branch Chowk Fuwara, Amritsar on which the cheque in question was drawn. Accused-petitioner from the very beginning has taken a stand that the cheque in question is neither signed by him nor it has been drawn on the Bank account maintained by him. He rather claims that petitioner has not maintained any Bank account in the aforesaid Branch of Union Bank of India. The accused in order to prove that fact has produced Jagdish Sharma as DW2 who admitted that the Bank account No. 52368 actually belongs to him and not to the petitioner-convict. It has been noticed that the learned Judicial Magistrate as well as the Court of Sessions has drawn adverse inference against the petitioner-convict on the ground that no hand-writing and finger print expert had been examined to prove that he has not signed the cheque in question. It has also come in

Sharma- DW2 has not been mentioned.

In the considered opinion of this Court, before convicting an accused it is the duty of the Court to satisfy itself that the accused sought to be convicted is the right person or not. The judgment of conviction has to be passed only if the Court is satisfied that the prosecution has proved its case beyond shadow of reasonable doubt. In the present case, the judgment passed by the Courts below show that the Courts were much impressed by statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 and the petitioner-convict has not produced opinion of the hand writing and finger print expert. It is well settled that the onus to prove placed on the accused is on preponderance of probabilities and once the accused discharges the aforesaid onus, the onus shifts on the complainant/prosecution to prove its case beyond shadow of reasonable doubt. Reference in this regard can be made to a judgment of larger Bench of 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 allowed. Judgment of conviction is set aside. The matter is remitted back to the Court of learned Judicial Magistrate who would re-consider the same in accordance with law. The petitioner through his counsel is directed to appear before the Judicial Magistrate on 17.1.2020.

06.12. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No