

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

227

CRA-AS-70-2016(O&M)
Date of Order:08.11.2019

GURDEEP SINGH

..Petitioner

Versus

M/S MILKH RAJ & SONS & ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate,
for the petitioner.

Mr. M.S.Yadav, Advocate
for the respondents

ANIL KSHETARPAL, J(Oral)

Special leave to appeal has been sought against the judgment of acquittal passed by the learned Magistrate while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881.

Learned Magistrate has returned the following findings:-

- (1) *Complainant-petitioner as General Power of Attorney of Mukhtiar Singh had sold his share in the joint land measuring 142 bighas and 13 biswas to daughter and her mother-in-law of the accused.*
- (2) *It has also come on record that petitioner-complainant had got encashed a cheque Ex.DW1/B from the account of the accused but thereafter the complainant re-deposited that amount of Rs.15,00,000/- in the account of the accused.*
- (3) *Writing Ex.DW2/B dated 11.05.2012 proves that the*

parties have settled their dispute for Rs.15,00,000/- which was given to the complainant through cheque and there is no reference to the cheque in question for an amount of Rs.35,00,000/- dated 20.04.2012.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the learned Magistrate along with the record.

Learned senior counsel appearing for the petitioner has submitted that the judgment passed by the learned Magistrate suffers from patent illegality as the Court has failed to consider that there is a statutory presumption in favour of holder of a cheque under Section 139 of the Negotiable Instruments Act, 1881 and it was for the accused to lead evidence and prove his defence and rebut the presumption.

On the other hand, learned counsel appearing for the respondents has submitted that in view of the findings which have been noticed above, the statutory presumption stood rebutted and, therefore, it was for the petitioner-complainant to prove his case beyond shadow of reasonable doubt. He further submitted that the learned trial Court has taken a plausible and probable view and therefore, this Court does not have jurisdiction to entertain the appeal against acquittal.

After considering the arguments of learned counsels, this court is of the view that the learned Magistrate has taken note of statutory presumption under Section 139 of the Negotiable Instruments Act, 1881. It is by now well settled that such presumption can be rebutted from the evidence led by the complainant. Reference in this regard can be made to a judgment of three Judges Bench passed in the case of **Rangappa vs. Sri**

Mohan (2010) 11 SCC 441.

Still further, the reasons which have been extracted above, appear to be probable and plausible reasons.

Hence, this court is not inclined to interfere with the judgment of acquittal.

Dismissed.

November 08, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No