

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2140 OF 2010**

SARDAR GURMEET SINGH

Appellant (s)

Versus

PREM CHAND AND ANOTHER

Respondent (s)

ORDER

We have heard learned counsel for the appellant.

In spite of service of notice, no one has entered appearance on behalf of the respondents.

This appeal by special leave is directed against the judgement and order dated 5.6.2009 passed by the High Court of Jammu and Kashmir, Jammu in Criminal Acquittal Appeal No. 37 of 2006, dismissing the appellant's appeal from the judgement dated 31.3.2006 of the City Judge, Judicial Magistrate 1st Class, Jammu in his file No. 72/Complaint of 2002 filed under Section 138 of the Negotiable Instrument At.

The appellant filed a complaint under Section 138 of the Negotiable Instrument Act, alleging that cheque amounting to Rs. 1,00,000/- has been returned unpaid with the banker's memo "Funds Insufficient". The cheque was drawn on Bank account maintained in the name of unregistered firm in discharge of personal loan of two of its partners.

On 31.3.2006, the Magistrate while dismissing the complaint, acquitted the respondents/accused of the offence punishable under Section 138 of the Negotiable Instruments Act. He observed that, even in case of sufficient

funds, the cheque could not have been honoured unless signed by the third partner. Therefore, the complainant is not a holder in due course, as such, provisions of the Act would not apply.

The appellant filed an appeal before the High Court of Jammu and Kashmir, Jammu, which was also dismissed by the impugned order. The High Court observed that it could not find any infirmity with the order of the trial court as the complainant was not the holder of cheque in due course.

There is no dispute as to the fact that the cheque was not signed by one of the partners. Further it is apparent from the material placed before us that the appellant has clearly failed to prove the liability of the firm. Therefore in light of Section 138 of N.I. Act, the appellant cannot be termed as holder in due course.

Considering the facts and circumstances of the case, we see no reason to interfere with the impugned judgement passed by the High Court.

The appeal is accordingly dismissed.

Pending applications, if any, stand disposed of.

..... J.
(**N. V. RAMANA**)

..... J.
(**PRAFULLA C. PANT**)

**New Delhi,
August 17, 2017**

ITEM NO.103

COURT NO.10

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2140/2010

SARDAR GURMEET SINGH

Appellant(s)

VERSUS

PREM CHAND & ANR.

Respondent(s)

Date : 17-08-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s)

Mr. Vijay Gupta, Adv.
Mr. Vivek Gupta, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(SUKHBIR PAUL KAUR)
AR CUM PS(S. SIVARAMAKRISHNA)
ASST.REGISTRAR

(Signed order is placed on the file)