

CRM-A-914-MA of 2018

Date of Decision: July 30, 2018

Seema Rani

.....Appellant

versus

Nirmal Singh

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL**

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Present: Mr. Deepak Aggarwal, Advocate  
for the appellant

**Sudhir Mittal, J. (Oral)**

The appellant is the complainant. She had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') against the respondent namely Nirmal Singh son of Mohinder Singh on the ground that said Nirmal Singh, had borrowed a sum of Rs. 4,80,000/- from her. Upon request made by the complainant, the respondent-accused issued a cheque dated 6.11.2018, for a sum of Rs. 4,80,000/- drawn on Axis Bank, Bathinda. The said cheque was dishonored on presentation leading to the filing of the present complaint.

2. The parties led their respective evidence and after examining the same, vide judgment dated 22.02.2018, learned trial Court dismissed the complaint and acquitted the respondent-accused.

3. Aggrieved by the aforementioned judgment, the complainant has sought leave to appeal.

4. The contention of learned counsel for the applicant-appellant is that the trial Court has misread and misconstrued the evidence on record. His contention is that the cheque has been proved on record and that a presumption arises in favour of the holder in due course of a cheque under Section 139 of the Act, which has not been rebutted in the present case. The respondent-accused has failed to prove the

agreement Ex. DA, wherein it is mentioned that a sum of Rs. 1,32,000/- was to be

paid to the complainant by way of installments of Rs. 25,000/- each and, therefore, the findings of the trial Court that the cheque in dispute was issued as a security cheque, are illegal and against the record. Since the respondent-accused has failed to rebut the prosecution in favour of the applicant-appellant, the judgment of the trial Court is not sustainable in law.

5. I have gone through the impugned judgment with the assistance of learned counsel for the applicant-appellant.

6. Perusal thereof shows that the applicant-appellant admitted the factum of signature on the Ex. DA. The said document has also been proved by DW-1 and DW-2. Thus, I am unable to accept the contention of learned counsel for the applicant-appellant that the document Ex. DA has not been proved on record. The next contention is that the signature of the applicant-appellant was obtained on a blank piece of paper and the writing has been made later on. The document Ex. DA has been shown to him by the learned counsel and from a perusal thereof it does not appear that the signature was obtained on a blank piece of paper and that the writing was inserted later on.

7. In view of the above, the findings of the learned trial Court that the cheque in dispute was issued as a security cheque is based upon the evidence on record and can not be said to be either perverse or contrary to the record. It is settled law that a cheque issued as security for money transaction can not be presented for prosecution of a person under Section 138 of the Act.

8. In view of the above, I do not find any infirmity or illegality in the impugned judgment. The application for leave to appeal alongwith the appeal is, accordingly, dismissed.

July 30, 2018

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**[SUDHIR MITTAL]**  
**JUDGE**

**Whether speaking/reasoned : Yes/No**

**Whether Reportable : Yes/No**