

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

**CRM-A-236-MA-2017
Date of decision : 15.07.2019**

Vivek Mahajan

.... Applicant

Versus

Sanjeev Bhandari

... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Malik, Advocate
for the applicant.

ANIL KSHETARPAL, J (ORAL)

Leave to appeal has been sought against judgement of acquittal in a complaint case filed by the applicant under Section 138 of the Negotiable Instruments Act. Learned trial Court has found that the cheque in question was handed over to the complainant as a security cheque as per agreement Ex. DW-2/1, on which the applicant has also signed. It has also come on record that there is no transaction after 2009.

Learned counsel for the applicant submitted that security cheque is nonetheless is a cheque and it can be utilized for discharge of the liability. Learned counsel further submitted that security cheque is issued and taken for this purpose only. He has relied upon a judgement passed by a Coordinate Bench in the case of Shalini Enterprise and another vs. Indiabulls Financial Service Limited 2013(2) R.C.R. (Criminal) 798.

On careful reading of agreement dated 26.11.2008 (Ex. DW-2/1), it is apparent that the security cheque was given as the accused

had taken certain Earth Moving Machines from the supplier i.e. applicant. It was clearly recorded in the agreement that after finishing the work, the security cheques would be handed over to the accused. There were three security cheques as is clear from Ex.DW-2/1 and Ex.DW-2/2. The security cheques were not issued for any existing liability. Under Section 138 of the Negotiable Instruments Act, a negotiable instrument/cheque issued for a recoverable liability on being dishonoured is an offence. In the present case, it has been established that the cheques in question were handed over on 26.11.2008 pursuant to agreement Ex.DW-2/1. The dishonoured cheque is dated 20.07.2011. Still further, it has come in evidence that there was no business transaction after 2009 between the parties.

Reliance placed by learned counsel for the applicant on the judgement of a Coordinate Bench in the case of *Shalini Enterprise (supra)* is misplaced as the learned Judge has decided the case on facts. Further once appellant-applicant has failed to prove due and payable liability of the accused with respect to cheque amount, the Court had not committed any error in dismissing the complaint.

For the reasons recorded above, no ground to grant leave is made out.

Accordingly, the present application is dismissed.

(ANIL KSHETARPAL)
JUDGE

15.07.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No