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CrI.A.No.470 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2023

CORAM:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.A.No.470 of 2016

S.Durga Bai

...Appellant/Respondent/Complainant

-Vs-

A.Francis

...Respondent/Appellant/Accused

Prayer:- Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure Code, 1973, against the judgment passed in C.A.No.137 of 2013 passed by the V Additional City Civil Court at Chennai, dated 05.02.2016 in reversing the judgment passed in C.C.No.12941 of 2006 by the VII Metropolitan Magistrate, George Town, Chennai, dated 14.06.2013.

For Appellant : M/s.D.Monisha

J U D G M E N T

The complainant in a private complaint filed under Section 200 of the Cr.P.C., complaining of offences under Section 138 of the Negotiable Instruments Act, is before this Court. Aggrieved by the judgment dated 05.02.2016 in CrI.A.No.137 of 2013 passed by the V Additional City Civil



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Court, Chennai. On the basis of the private complaint filed by the complainant in C.C.No.12941 of 2006 by a judgment dated 14.06.2013, the learned VII Metropolitan Magistrate found that the accused was guilty of the offence and sentenced him to undergo simple imprisonment for 6 months and also directed him to pay compensation of Rs.2,10,000/- to the complainant within a period of one month. Aggrieved by the same, the accused preferred appeal, and in the said appeal, the aforementioned judgment was delivered acquitting the accused, hence this appeal.

2.The learned counsel appearing on behalf of the appellant would submit that firstly, it is the version of the accused that while borrowing a sum of Rs.20,000/- they issued two cheques in repayment thereof, for Rs.10,000/- each. The said statement, does not match with their allegation that there has been material alternation in the cheque and therefore, the defence falls on the face of it and therefore, the Appellate Court ought not to have acquitted the accused.

3.The learned counsel for the appellant further submitted that where it has been the categorical case of the complainant that for a lawful amount due they have issued the cheque, a mere discrepancy between a complaint



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and the answering in the cross examination that the cheque was issued towards the balance of the chit amount and not for any loan, by itself cannot form the basis for acquittal.

4.I have considered the said submission made by the learned counsel appearing for the appellant and perused the material records of the case.

5.On perusal of the records, it is seen that the Appellate Court, in paragraph 11 of the judgment, has quoted the statutory notice issued by the complainant. Therein, the complainant clearly states that the cheques were issued in repayment of the amount borrowed from her. Similarly, the same statement is categorically made in paragraph 3(i) of the private complaint filed under Section 200 of Cr.P.C. before the learned Magistrate.

6.In the reply notice, the borrowal of loan is denied. Thereafter, the Appellate Court in paragraph 13 considered the fact that the complainant has turned around and has abandoned her original case that cheques were issued for repayment of the loan and instead, coined a new theory in the cross examination that she was conducting a chit and that the balance



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amount in respect of the chit amount Rs.1,60,000/- was due from the accused. Hence the Appellate Court disbelieved the complainant and decided to exercise the discretion to grant the benefit of doubt in favour of the accused. The said finding of the Appellate Court by exercising its discretion and rendering its finding cannot be termed as perverse or an impossible view.

7.In that view of the matter, within the limited scope of interference available for this Court in an appeal against acquittal, I am unable to reverse the finding of the Appellate Court and therefore, this appeal fails and is dismissed.

03.03.2023

cda

Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No

To



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- 1.V Additional City Civil Court,
Chennai.
- 2.VII Metropolitan Magistrate,
George Town, Chennai,
- 3.The Public Prosecutor,
Madras High Court.

D.BHARATHA CHAKRAVARTHY, J.,



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