



Crl.A.No.224 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.224 of 2017

G.Sunitha

.. **Appellant**

Vs.

Benjimi

.. **Respondent**

Prayer: Criminal Appeal filed under Section 378 (4) of Cr.P.C., to set aside the order in acquitting the accused in C.C.No.1 of 2012 on the file of the Judicial Magistrate, Arakkonam, Vellore District, dated 03.11.2016 and convict and sentence him for offence punishable under Section 138 of Negotiable Instruments Act and further order payment of compensation under Section 357 of Cr.P.C.,.

For the Appellant : No Appearance

For the Respondent : Mr.S.Ambigapathi



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JUDGMENT

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This appeal is filed challenging the Judgment of the learned Judicial Magistrate, Arakkonam, Vellore District, dated 03.11.2016 made in C.C.No.1 of 2012. By the said Judgment, the respondent / accused was acquitted of an offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The parties are referred to as 'Complainant' and the 'Accused' as per the array in the Trial Court.

3. The case of the complainant is that for the purpose of medical expenses of the accused, he had borrowed a sum of Rs.5 Lakhs from the complainant. Of the said sum of Rs.5 Lakhs, a sum of Rs.1,40,000/- was paid through Cheque and a sum of Rs.3,60,000/- was paid as a cash. In repayment of the loan, the accused issued a Cheque dated 24.07.2011 for a sum of Rs.5 Lakhs. The Cheque returned 'dishonoured' and the complainant issued a demand notice on 21.08.2011 and after receipt of the same, neither any reply was sent nor the amount was paid and hence the complaint was filed. A sworn statement was recorded and the complaint was taken on file. Upon appearance and issuance of



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copies, the accused denied the allegations and stood trial. In order to establish the charges, the complainant examined herself as P.W.1 and marked documents in Exs.P1 to P8. The accused examined himself as D.W.1 and no documents were marked on behalf of him.

4. The Trial Court considered the case of the parties. The Trial Court considered the conduct of the complainant. In a huge sum of Rs.5 Lakhs is said to have been advanced, it is not even the case of the complainant that the Cheque was issued on the date of advancement of loan. The said factor was kept in mind. The accused in his evidence has stated that only a sum of Rs.1,40,000/- was obtained as loan from the complainant's husband, through Cheque and the same was also repaid through banking transactions. The Cheque which was given as a security was misused by the complainant. Coupled with the said evidence, the Trial Court also examined the Ex.P1 – Cheque, which is all filled up through different ink and handwriting and cumulatively considered all the three factors to hold that the accused has rebutted the presumption and in the absence of any further proof on behalf of the complainant, benefit of doubt has



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to be given to the accused. Aggrieved by the same, the present appeal is filed.

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5. The appeal is filed on the ground that even the accused admits borrowal of a sum of Rs.1,40,000/-, which is also part of the aforementioned Rs.5 Lakhs. The signature in Ex.P1 – Cheque is also admitted. When a demand notice was issued in Ex.P4 no reply was sent. Therefore, for the first time, suddenly in the cross examination, the accused raises a defense, as if only part of the money was borrowed and that too was repaid. In the absence of proof of any repayment, the Trial Court ought not to have allowed the defence.

6. I have considered the said grounds raised on behalf of the appellant and heard *Mr.Ambigapathi*, the learned counsel for the respondent / accused.

7. Firstly, when part of the money is said to be given by way of banking transactions, there is absolutely no explanation whatsoever as to on what date, how and why the rest of the loan amount was handed over as cash. Neither the source was explained nor the manner in which it was disbursed was also not



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brought on record. The Trial Court has taken into consideration all of the above.

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The important averment of the complainant that he has parted away with a sum of Rs.5 Lakhs, without even any document in writing such as promissory note and even the Cheque was said to have been given subsequently. This apart, as per the complainant, he had only advanced a sum of Rs.1,40,000/- through Cheque. As per the accused, the borrowal was from the complainant's husband. Both of them did not produce the respective bank statements, to prove their versions. However, in a criminal complaint, the weakness of the case of the accused cannot be a ground for conviction and it is for the complainant to prove her version.

8. Therefore, the Trial Court granting the benefit of doubt to the accused cannot be held to be an impossible view or a perverse view and accordingly, this appeal against acquittal fails and is dismissed.

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Neutral Citation : Yes/No

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To

1.The Judicial Magistrate, Arakkonam
Vellore District.

2.The Section Officer
Criminal Section
High Court of Madras.

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