

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.381 of 2002

Pricol Finance Limited,
1087-A, Avanashi Road,
Post Box No.6311,
Coimbatore - 641 020

Represented by Mr.R.Navaneethan ... Appellant/Complainant

Vs.

1. Ceeaar Integrated Farm (P) Ltd.,
No.747, V.K.K. Menon Road,
New Siddhapudur,
Coimbatore - 641 044.

2. T.P.Chinnasamy
Director,
Ceeaar Integrated Farm (P) Ltd.,
No.747, V.K.K. Menon Road,
New Siddhapudur,
Coimbatore - 641 044. ... Respondents/Accused

Prayer : Criminal Appeal filed under sections 378 r/w. 382 of Criminal Procedure Code to set aside the order of acquittal passed by the Learned Judicial Magistrate - V, Coimbatore in C.C.No.288/2000 on 1st February 2002, convict the respondents.

For Appellant : M/s.Ram & Ram
For Respondents : No Appearance

O R D E R

The appeal has been filed against an order of acquittal. The appellant is the complainant in a private complaint filed for an offence under Section 138 of Negotiable Instruments Act. The above complaint has been filed on the ground that the respondents entered into a financial agreement with the appellant for availing financial assistance in respect of a Motor Vehicle. Pursuant to the same, a sum of Rs.3,50,000/- was disbursed to the accused which is repayable in 36 monthly installments of Rs.14,238/- each. There was default in payment of installments. Subsequently, towards the payment of

arrears of installments the respondents issued a cheque, dated 31.01.2000 for a sum of Rs.2,19,050/-, drawn on Canara Bank, Agricultural Finance Branch, Coimbatore, and when the same was presented, it got returned on the ground of "insufficient funds". in the respondent account. Then a notice was issued to the respondents demanding payment of the amount, but no payment was made by the accused. Hence after completing the legal procedures, the complainant filed the present complaint.

2. In order to prove his case, the complainant has examined one Navaneethan, as P.W.1 and the Bank Manger as P.W.2 and marked the cheques as Ex.P.1, Return Memo as Ex.P.2, Postal Receipts as Ex.P.3, Authorisation letter as Ex.P.4 and Statement of Account as Ex.P.5.

3. When the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, he did not examine any witness nor marked any documents on his side.

4. Having considered all the above materials, the trial Court acquitted the respondent/accused holding that the appellant/complainant failed to prove service of notice on the respondent, and the complainant neither produced the notice which was alleged to have sent to the respondents' address nor the postal cover. Now, challenging the above said order of acquittal the appellant/complainant is before this Court with this appeal.

5. I have heard, Mr.Ramesh for M/s.Ram & Ram, learned counsel appearing for the appellant. There is no representation for the respondents. I have perused the records carefully.

6. It is the case of the complainant that, after the cheque was returned as insufficient funds the complainant has sent a legal notice on 15.02.2000, calling upon the respondents/accused to settle the amount in respect of the dishonoured cheque within a period of 15 days from the date of receipt of the demand notice, which is one of the condition precedent for invoking Section 138 of Negotiable Instruments Act. But the appellant did not produce the copy of the notice, and nor marked the acknowledgment for receipt of the notice. There is no material available on record to show that the demand notice was send to the accused, and he was in receipt of the same.

7. Considering the entire materials, the trial Court has held that the complainant failed to prove the case and acquitted the accused/respondents. I have carefully considered entire material available on record and I find no illegality or perversity in the impugned judgment of the trial Court and I

find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

In the result, the Criminal Appeal is dismissed and the Order of acquittal passed by the learned Judicial Magistrate - V, Coimbatore in C.C.No.288 of 2000 dated 01.02.2002 is confirmed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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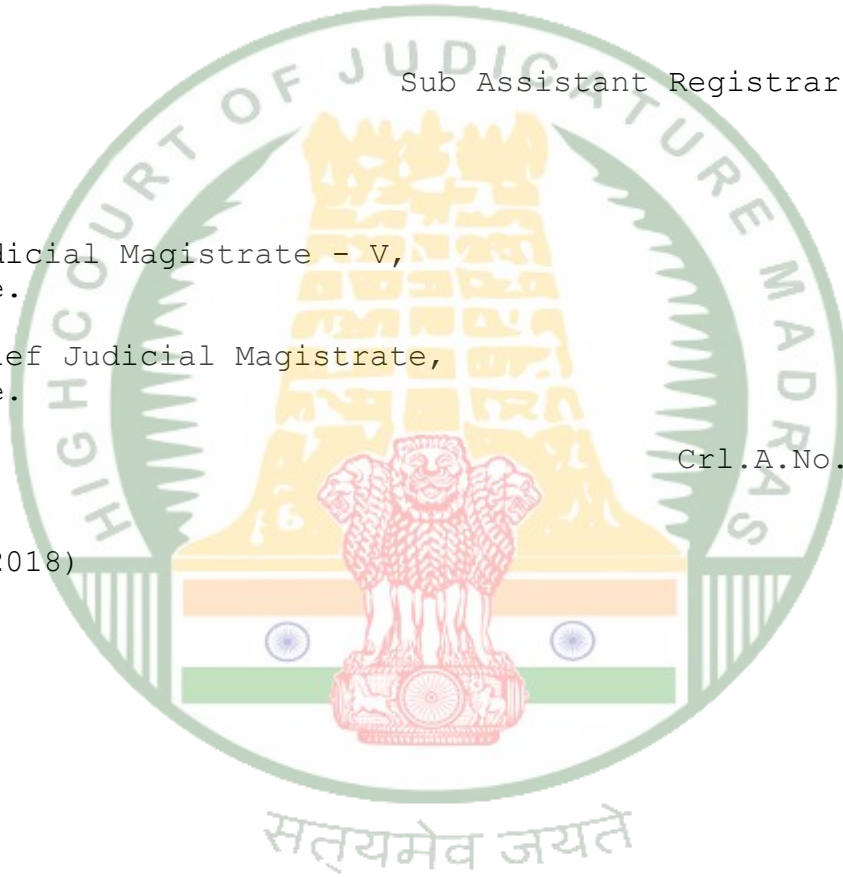
To

1. The Judicial Magistrate - V,
Coimbatore.

2. The Chief Judicial Magistrate,
Coimbatore.

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vba (CO)
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