

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.A.No.522 of 2013

M/s.Manavalla Youth Welfare Association,  
rep. by its Secretary K.Madhan,  
S/O.J.Krishna Gounder,  
Manavalla,  
Masinagudi,  
The Nilgiris.

... Appellant

Vs.

Reeta Elizabeth Hemalath

... Respondent

Prayer: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure against the order dated 20.06.2012 by the learned Judicial Magistrate, Gudalur, in C.C.No.10 of 2012.

For Appellant : Mr.Franklin

JUDGMENT

This appeal has been preferred against the order passed in C.C.No.10 of 2012 by the learned Judicial Magistrate, Gudalur, The Nilgiris, by order dated 20.06.2012.

2.Heard Mr.Franklin, learned counsel appearing for the appellant.

3.Even though the name of the respondent with full address has been shown in the cause list, none appears for the respondent.

4.The case of the appellant is that it is a registered Society and it had filed a private complaint against the respondent for the alleged offences punishable under Sections 406 and 408 of IPC. The said complaint was dismissed by the learned Magistrate by the impugned order dated 20.06.2012 on the ground that the complainant was not present on that day and also, he had failed to appear for three hearings consecutively. Even after notice was ordered, there was no process fee filed by

the complainant. For all these reasons, the complaint was dismissed by the learned Magistrate.

5. In this regard, Mr. Franklin, learned counsel appearing for the appellant would submit that batta has been in fact filed with C.F.R. Register Entry No.4528 on 10.05.2012. However, without having taken note of the same, the learned Magistrate proceeded to state that the process fee was not filed by the complainant. Moreover, the learned counsel appearing for the appellant would submit that on 20.06.2012, the complainant could not present, for the reason that normally, on every Wednesday, there would be a Camp Court at Pandhalur, and there would be no regular sitting at Gudalur and on that impression, the complainant was not able to present on that day before the learned Magistrate. Therefore, the learned counsel appearing for the appellant would submit that the two reasons adduced by the learned Magistrate for dismissing the complaint of the appellant may not be fully a justifiable reason and moreover, since the respondent has allegedly cheated the appellant/Society, if one more chance is given to the appellant, it would take necessary steps to get on with the case without any further delay, or otherwise, the appellant would be prejudiced as the respondent being the accused and allegedly cheated the appellant/Society, which is the NGO and hence, the learned counsel appearing for the appellant seeks indulgence of this Court.

6. Considering the said aspects of the case and the submissions made by the learned counsel appearing for the appellant and also, taking note of the fact that the accused claimed that he has filed process fee on 10.05.2012 itself and also, he was not able to present on 20.06.2012, on the general impression that there would be a Camp Court on that day and in order to give a chance to the appellant, this Court is inclined to pass the following orders:

(1) The impugned order and Judgment dated 20.06.2012 made by the learned Judicial Magistrate, Gudalur, in C.C.No.10 of 2012, is hereby set aside and the matter is remitted to the Magistrate Court with a direction to take C.C.No.10 of 2012 on file and proceed with the case in accordance with law, of course, after issuance of notice to both sides intimating the date of hearing.

(2) It is made clear that once the notice of hearing is given by the learned Magistrate to the complainant, he shall along with his Counsel appear before the learned Magistrate

and proceed with the case in accordance with law and in the event of any further default on the side of the complainant, the same can be viewed seriously and appropriate action be taken by the learned Magistrate in accordance with law.

With these observations, this Criminal Appeal is allowed.

Sd/-  
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

mps

To

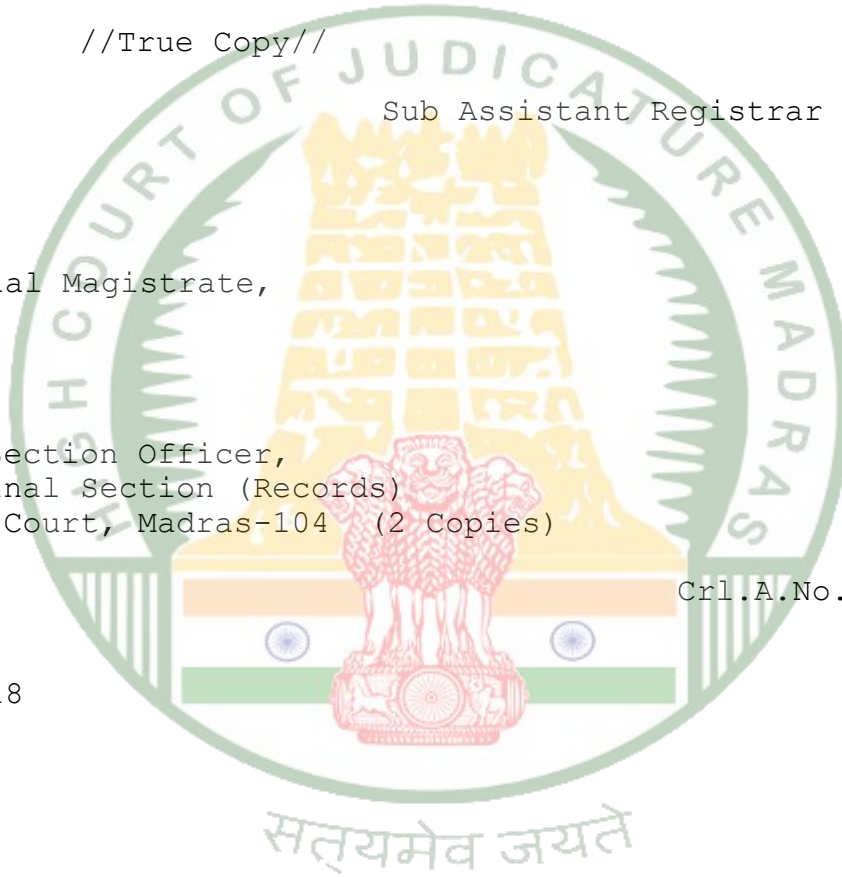
The Judicial Magistrate,  
Gudalur.

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The Section Officer,  
Criminal Section (Records)  
High Court, Madras-104 (2 Copies)

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