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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P. (MD)No.14288 of 2013

in

CRL.A. (MD)No.SR.34793 of 2013

Venkatasubramanian

... Petitioner / Appellant

-vs-

B.Kannan

... Respondent / Respondent

PRAYER in CRL.O.P. (MD)No.14288 of 2013: Criminal Original Petition filed under Section 378(4) of Cr.P.C., praying to grant leave to the petitioner to file the appeal against the judgment dated 12.10.2011 made in C.C.No.365 of 2010 on the file of the learned Judicial Magistrate Court No.II, Dindigul and set aside the same as illegal.

PRAYER in CRL.A. (MD)No.SR.34793 of 2013: Criminal Appeal filed under Section 378 of Cr.P.C., praying to call for the records relating to the judgment dated 12.10.2011 made in C.C.No.365 of 2010 on the file of the learned Judicial Magistrate Court No.II, Dindigul and set aside the same as illegal.

For Petitioner : Mr.M.Kannan

For Respondent : Unserved

ORDER

This Criminal Original Petition has been filed to grant special leave to prefer an appeal against the order of acquittal dated 12.10.2011 made in C.C.No.365 of 2010 on the file of the learned Judicial Magistrate Court No.II, Dindigul and set aside the same.

2.Records indicates that a private complaint filed by the petitioner herein under Section 138 of Negotiable Instrument Act was dismissed for non-prosecution by the Trial Court by order dated 12.10.2011. The Trial Court while dismissing the complaint, has recorded the absence of the complainant and no representation for him. The Trial Court has also recorded that inspite of repeated adjournments, the complainant is not ready to give evidences. It shows that the complainant is not interested. Hence, the complaint is dismissed under Section 256 Cr.P.C.

3.Challenging the said dismissal for non-prosecution, the complainant has preferred this appeal along with special leave petition to prefer an appeal. This application for seeking leave is dated 18.09.2012, but filed before the Registry on 18.12.2012.



Since then, the matter is pending for service. Though private notice was permitted to serve on the respondent / accused, notice has been returned as not served. The learned counsel appearing for the petitioner has filed the returned cover along with a letter dated 08.07.2018 before this Court.

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4.This Court finds that for the past five years, the petitioner / complainant is unable to effect service of notice to the respondent and his whereabouts is not known. Though the petitioner's complaint was dismissed on 12.10.2011, after the delay of one year, this appeal has been preferred and even after a period of five years, the complainant is unable to serve notice on the respondent.

5.In the above factual scenario, there can be no reason to grant special leave to pursue the appeal against the order of acquittal dated 12.10.2011 passed by the learned Judicial Magistrate Court No.II, Dindigul. Hence, this Criminal Original Petition seeking special leave to prefer an appeal is dismissed. Consequently, connected CRL.A.(MD)No.SR.34793 of 2013 is also closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Judicial Magistrate No.II,
Dindigul.

+1cc to Mr.M.Kannan, Advocate Sr.No.79486

MYR

VB/RP/SAR3/06.09.2018/2P/3C

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