

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL NO.487 OF 2012

Abdulbari

.. Appellant/Complainant

/versus/

1. M/s New Care Tianjin Tiansh
India Pvt., Ltd.,
No.143-A, Sampath Nagar,
Indane Complex,
Erode-11,
Rep.by its Partner Karthika

2. Karthika

.. Respondents/Accused

Criminal Appeal filed under Section 378 of Code of Criminal Procedure praying to set aside the order of acquittal dated 12.12.2011 passed in C.A.No.112 of 2011 on the file of the First Additional District and Sessions Judge, Coimbatore reversing the judgment dated 28.04.2011 passed in C.C.No.710 of 2006 on the file of the Judicial Magistrate No.V, Coimbatore convicting the respondents under Section 138 of the Negotiable Instruments Act, and sentencing the first respondent to pay a sum of Rs.5,000/- as fine and sentencing the second respondent to undergo a simple imprisonment for a period of one year and also by directing them to pay compensation amount of Rs.6,00,000/- and that the fine amount of Rs.5,000/-, if not paid by the first respondent, the second respondent shall pay the fine amount or in default she would undergo simple imprisonment for another one month, by allowing this Criminal Appeal.

For Appellant :Mr.P.Raja

J U D G M E N T

The learned counsel appearing for the appellant is present and reports that he is not able to trace the address of the respondent and seeks further time.

2. Perusal of the records indicates that this appeal is directed against the order of acquittal passed by the lower appellate Court reversing the finding of the trial Court. The appellant herein filed a complaint under Section 138 of the Negotiable Instruments Act and the trial Court has allowed the complaint, whereas on appeal, the lower appellate Court in C.A.No.112 of 2011 reversed the finding of the trial Court and acquitted the respondent/accused. In the said circumstances, the present appeal was filed before this Court in the year 2012.

3. When the matter was listed for admission, this Court admitted the appeal and permitted the appellant to take private notice to the respondent returnable in eight weeks. Thereafter, when the matter was again taken up for hearing on 09.01.2018, the learned counsel appearing for the appellant has reported that the private notice sent to the respondent was returned as "no such person" and sought for further time to take fresh private notice to the correct address of the respondent. Accordingly, this Court has permitted the appellant to take fresh notice to the correct address of the respondent returnable in two weeks and directed the Registry to post the matter after completion of service.

4. Pursuant to the order dated 09.01.2018, the appellant has not taken any steps to find out the correct address of the respondent to serve notice. When the matter was listed on 08.02.2019 after one year, the learned counsel appearing for the appellant sought for one more opportunity to serve notice on the respondent to the correct address. Therefore, this Court granted time to serve notice on the respondent returnable by 22.02.2019. Again, when the matter was listed on 22.02.2019, the learned counsel appearing for the appellant reported that the private notice sent to the respondent was returned as "unserved". Affidavit of service along with the returned cover was also filed. Hence, another four weeks time was granted to the appellant to take steps.

5. Today i.e. 25.03.2019 when the case was taken up for hearing, the learned counsel appearing for the appellant would submit that they are not able to trace the address of the respondent and hence, he seeks further indulgence of the Court

and grant adjournment. This Court on perusal of the records is of the opinion that the complainant/appellant has not taken steps to serve notice to the respondent, despite granting opportunity on several occasions since 09.01.2018. Even after lapse of several years, the appellant could not trace the respondent to serve the notice. Hence, this Criminal Appeal is dismissed for non-prosecution.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

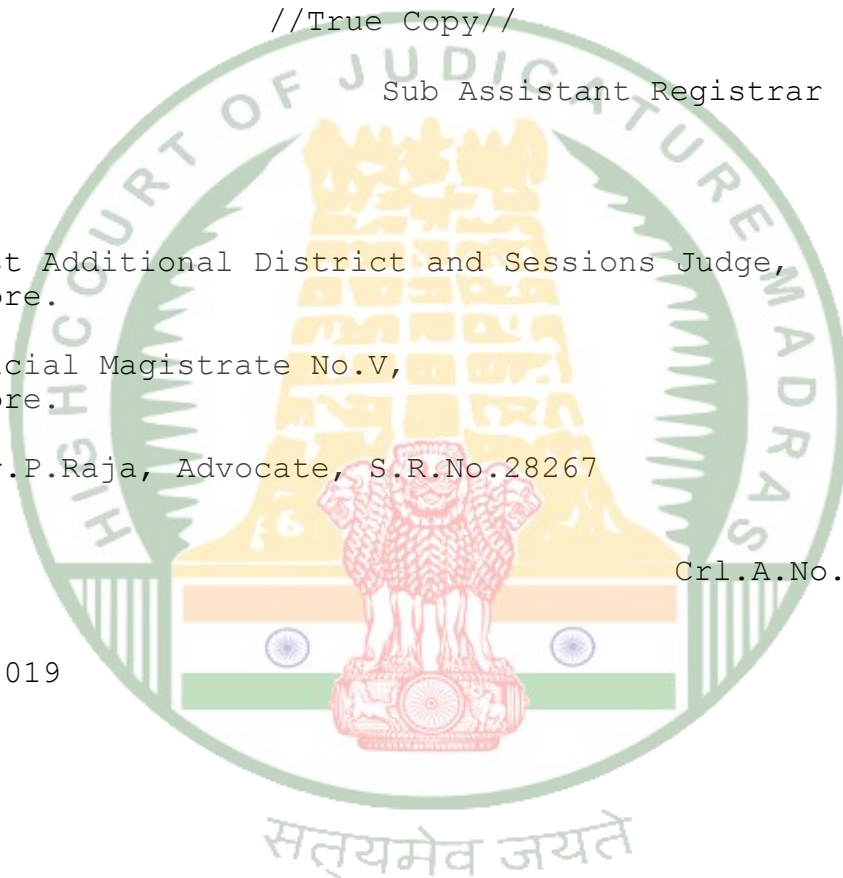
1.The First Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate No.V,
Coimbatore.

+1cc to Mr.P.Raja, Advocate, S.R.No.28267

Crl.A.No.487 of 2012

CA(CO)
CS/08/05/2019



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