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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A(MD) No.182 of 2013

M/s.Sakthi Hatcheries
Represented by its Branch Incharge,
M.V.Pradeep Kumar,
(Aged about 35 years)
S/o.Mr.T.M.Viswanathan
No.55, Visvasapuri First Street,
1st Floor, A.A.Road,
Gnanaolivupuram
Madurai-625 016
(Within the limits of C-5 Karimedu
Police Station, Madurai-625 016)

... Appellant

-VS-

S.Raghupathy

... Respondent

PRAYER : Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure praying this Court to call for the records and set aside the order dated 10.09.2012 passed in S.T.C.No.187 of 2012 on the file of the learned Judicial Magistrate No.II, (Fast Track Court), Madurai and restore the same.



For Appellant : Mr.J.Barathan

For Respondent : Mr.D.Malaichamy

JUDGMENT

The private complaint initiated by the appellant herein for the offence under Section 138 of NI Act came to be dismissed by the trial Court on 10.09.2012 for the following reasons:-

Complainant not present. Accused present. The presence of the accused is very much required to proceed further. But despite notice issued to the complainant, the complainant is not present. Hence, the accused is acquitted under Section 256 Cr.P.C.

2. This appeal is filed to set aside the order passed by the trial Court acquitting the accused. The appeal also was filed with the delay of 86 days and the same was condoned. When the matter is taken up for consideration after listing the matter in the advance list on 19.02.2024, the counsel on



record states that the parties have taken back the bundle and they have no instructions.

3. It is the case initiated under Section 138 of NI Act adopting the private complaint process. The reason stated for non appearance appears to be very flimsy, since whenever the case is transferred from one Court to another, the same will be put to notice to the counsel as well as notice board of the Court. Being a private complaint, the complainant is expected to be present on every hearing date, which will be intimated by the Court on the date of hearing. It is to be noted that the accused was present on all hearing dates in this case. While the accused was able to know the hearing date and change of the Court, it is unbelievable that the complainant was not aware of the transfer of the case to some other Court and the hearing date. Even after preparing the appeal through one counsel, it appears that the complainant has taken back the bundle from the counsel. Therefore, he should have made arrangements to appear personally or through some other counsel, which he has not chosen to do so.



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4. In such circumstances, this Court see that the complainant is disinterested in pursuing his complaint and the court cannot keep waiting for the complainant to pursue his matter on his side. Hence, this Criminal Appeal is dismissed.

01.03.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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To:

- 1.The Judicial Magistrate No.II,
(Fast Track Court), Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

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JUDGMENT MADE IN

CRL.A(MD) No.182 of 2013

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