

CRIMINAL CASE No.3768 / 2008

- :: ORDER BELOW EXHIBIT 1 :: -

The present is the complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

Perused the record. This matter is pending since long. The record clearly shows that though the matter is very old, yet the process could not be served upon the accused. It is also undisputed that on the request of the learned advocate for the complainant, recently fresh processes were issued and handed over to the complainant for effecting service upon the accused named in the complaint. However, the said processes are returned unserved. It also appears from the record that no serious attempts have been made by the complainant to effect service of process upon the accused except getting re-issued the process and, thus, the matter is yet pending at the initial stage. It also seems that the complainant has no serious interest in proceeding further with the matter.

Today also, the complainant is not present and the learned advocate for the complainant has submitted *pursis* / application declaring that the authorised officer of the complainant is not present today. It is true that the officer of the complainant is not present but it is not the submission that if the officer had remained present, he would have taken some actions to serve the process. Therefore, this Court is of the view that even if the complainant had remained present, he would not have taken any step. This Court could have granted one more adjournment considering the fact that the complainant is a government company, had there been case that on the next date, the complainant would effectively serve the process upon the accused. But, that is not the case here and, therefore, no purpose would be served even if the matter is kept alive.

It also appears that whereabouts of the accused are not traceable.

Also considered the decisions of Hon'ble Apex Court in *S.Ramakrishna Vs. Rami Reddy, 2008 AIR SC 2066* and the Hon'ble Gujarat High Court in *Bhavani Textiles Mills Vs. state of Gujarat* rendered in *Criminal Appeal No.2405/2009* on 08.10.2010.

Having heard the learned advocate for the complainant, it does not appear that if further time is granted, the complainant would be able to serve the accused and the matter would be proceeded with further. In this view of the matter and as the matter is pending since long as well as no process could be served till date, this Court is of the view that the complaint deserves to be dismissed.

Accordingly, the complaint stands dismissed.

Place : Ahmedabad

(RAJENDRA H. PRAJAPATI)

Date : 30-03-2019

Additional Chief Metropolitan
Magistrate, Court No.31, (GJ-00889).