



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.07.2017

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD)Nos.343 and 326 of 2016

and

CRL.M.P(MD)No.4373 and 4256 of 2016

1.K.S.Kaleel Rahman ... Revision Petitioner/Complainant in
Crl.R.C(MD)No.343 of 2016

2.M.Kaja Najimudhin ...Revision Petitioner/Complainant in
Crl.R.C(MD)Nos.326 of 2016

-Vs-

1.S.Mohamad Yasin
Son of N.Shahul Hameed,
Partner Gani Oil Mill and Ginning Factory,
Peraiyur, Madurai District.

2.S.Abuthahir,
Son of N.Shahul Hameed,
Partner Gani Oil Mill and Ginning Factory,
Peraiyur, Madurai District.

... Respondents/Accused in both Crl.R.Cs

Prayer in Crl.R.C(MD)No.343 of 2016: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying this Court to call for the records in S.T.C.No.96 of 2012 and to set aside the order passed by the learned Fast Track Court Judge No.1(Judicial Magistrate Level), Madurai in Cr.M.P.No.3355 of 2015, dated 5.4.2016.

Prayer in Crl.R.C(MD)No.326 of 2016: Criminal Revision Case filed under Section 397 (i) r/w 401 of the Code of Criminal Procedure, praying this Court to call for the records in S.T.C.No.1460 of 2012 and to set aside the order passed by the learned Judicial Magistrate No.I, Fast Track Court(Judicial Magistrate Level), Madurai in Cr.M.P.No.3356 of 2015, dated 5.4.2016.

For Petitioner : M/s.R.Mohamed Rajapdeen
(in both Crl.R.Cs)

For Respondents : M/s.R.Mariappan
(in both Crl.R.Cs)

COMMON ORDER

<https://hcservices.ecourts.gov.in/hcservices/> Pursuing the Petitioners applications filed under Sections 319 of Cr.P.C, the present revisions have been filed.



2.The Petitioners are the complainants in private complaints under Section 138 of Negotiable Instruments Act. The above complaints have been filed on the ground that the respondents herein are partners of one Gani Oil Mill and Ginning Factory at Peraiyur, Madurai, and they have approached the complainants and borrowed a sum of Rs.2,50,000/- as loan for their business purpose. In order to discharge the above said loans, they have issued two post dated cheques and when the same was presented for collection, it was returned with an endorsement 'insufficient fund', thereafter, complying with all the formalities, the Petitioners have filed the present complaints. The lower Court taken cognizance and issued summons to the respondents/accused. During the course of trial, the Petitioners examined the Bank Manager of Tamil Nadu Mercantile Bank, Rajapalayam, wherein he has stated that the accused are partners of one Yasin and Brothers, a Partnership Firm. Now based on that evidence, the Petitioners have filed applications under Sections 319 of Cr.P.C., to include that Yasin and Brothers, the Partnership Firm as third accused in the present complaints. That applications have been dismissed by the Court below and challenging the same, the above two revisions have been filed.

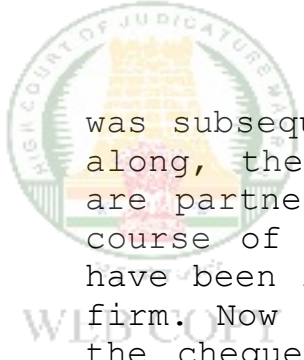
3.Heard the submissions of Mr.R.Mohamed Rajapdeen, learned counsel appearing for the Petitioners and Mr.R.Mariappan, learned counsel appearing for the respondents and considered the materials on record.

4.The learned counsel for the Petitioners submitted that from the evidence of the Branch Manager, it could be seen that the cheques have been issued by one Yasin and Brothers, a Partnership firm. Hence the above said company, being partnership firm, should also be included as third accused in the case.

5.The learned counsel for the respondents submitted that in the complaints, it has been specifically mentioned that the respondents are partners in one Gani Oil and Ginning Factory and for that purpose, they obtained loan. Nowhere they have stated in the complaints that the Petitioners are partners in Yasin and Brothers Partnership Firm. Now the Petitioners wants to introduce a new case based on the evidence of the Branch Manager. The Court below considering the entire materials, dismissed the applications.

6.I have considered the rival submissions of either side and perused the materials available on record.

7.The case of the Petitioners is that the respondents are partners in one Gani Oil Mill and Ginning Factory and for their concern, they have borrowed a sum of Rs.2,50,000/- and in order to discharge the same, they have issued two cheques. It



was subsequently returned by the Bank for insufficient funds. All along, the Petitioners proceed on the basis that the respondents are partners of one Gani Oil and Ginning Factory. But during the course of evidence of Branch Manager, he has stated that cheques have been issued by one Yasin and Brothers, which is a partnership firm. Now the Petitioners wants to change the entire case, as if the cheques have been issued on behalf of the above said Yasin and Brothers Partnership Firm, which is not permissible at this stage. The Petitioners have filed the complaints only on the basis that they were partners of one Gani Oil Mill and Ginning Factory. The Petitioners cannot now introduce a new case based on the evidence of the Bank Manager. The Court below considering the materials on record, rightly dismissed the applications. This Court finds no merit in the revisions and thus the revisions fail.

8. Accordingly, the Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (RTI)

/ True Copy /

Sub Assistant Registrar (C.S.)

To

The Judicial Magistrate No.I,
Fast Track Court (Judicial Magistrate Level),
Madurai

+1cc to M/S.R.MARIAPPAN, Advocate SR.No.27508

vsn

MAS/JC/SAR2:10.08.2017:3P-3C

Cr1.R.C (MD) Nos.343
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and
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