



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
Cr1.O.P.(MD).No.95 of 2017

WEB COPY

1.K.S.Kaleel Rahman ... Petitioner / Complainant

Vs.

1.S.Mohamad Yasin

2.S.Abuthahir

...Respondents / Accused

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in S.T.C.No.96 of 2012 and set-aside the order passed by the learned Fast Track Court Judge No.I (Judicial Magistrate level), Madurai in Cr.M.P.No.5072 of 2015, dated 24.08.2016.

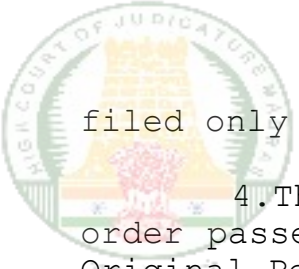
For Petitioner :Mr.A.Raja
For Respondents :Mr.R.Mariappan

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below, dismissing the application filed under Section 311 Cr.P.C. to re-open the case.

2.The petitioner is the complainant. This complaint was filed under Section 138 of the Negotiable Instrument Act against the respondents. Even though, the case was at the stage of final hearing in the year 2016, the petitioner chose to file this petition mainly on two grounds. The first ground was that the Branch Manager of Tamil Nadu Mercantile Bank, Rajapalayam, has to be examined in order to establish that the accused persons are partners of Yashin and Brothers. The second ground on which the petition was filed was that the petitioner as complainant will have to prove the liability of the accused and their acquaintance with the said Partnership firm.

3.The Court below has considered the entire issue in detail. The Court below has given a specific finding that the complainant has nowhere averred that the accused persons belonged to Yashin and Brothers firm and for this purpose, the Bank Manager cannot be examined. The Court below has also given a finding that the entire attempt made by the petitioner was to fill up lacuna. Earlier, the application was filed under Section 319 Cr.P.C. to add Yasin and Brothers firm as accused and the same was dismissed. In order to get over that order, the present petition was filed under Section 311 Cr.P.C. Therefore, the Court below held that the petition under Section 311 Cr.P.C. can never be entertained and the same has been



filed only to fill up lacuna of the case of the complainant.

4. This Court does not find any ground to interfere with the order passed by the Court below. In view of the same, this Criminal Original Petition stands dismissed.

5. There shall be a direction to the Court below to complete the proceedings in S.T.C.No.96 of 2012, within a period of two months from the date of receipt of copy of this order.

Sd/

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar(CS-I)

To

The Fast Track Court Judge No.I

(Judicial Magistrate level), Madurai.

+1cc to Mr.R.Mariappan, Advocate, SR.No. 91569

Crl.O.P.(MD).No.95 of 2017
24.10.2018

TSG

KK/RP/SAR-1/03.12.2018/2P-3C