



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2018

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THE HONOURABLE MR. JUSTICE **G.R.SWAMINATHAN**

Crl.O.P.(MD).No.1321 of 2013

and

M.P.(MD).No.1 of 2013

1.Abdul Hafeez

2.Abdul Hadhi

3.M/s.A.G.Mohamed Ibrahim,

Rep. By its Partner Abdul Hafeez,

No.12, Abdul Kaboor Street,

Mannarpuram, Trichy - 20.

... Petitioners/Respondents

Vs.

R.Ashok Sebastian

... Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crl.R.C.No.SR.139/23.12.2011 on the file of the learned District and Sessions Judge, Trichy and quash the same against the petitioner.

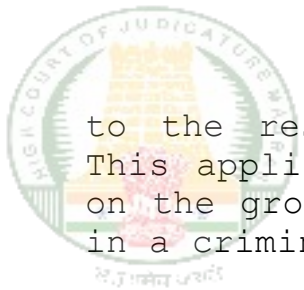
For Petitioners : Mr.T.Senthilkumar

For Respondent : Mr.S.Muthukrishnan

O R D E R

The petitioners has come forward with this petition to call for the records of Crl.R.C.No.SR.139/23.12.2011 on the file of the learned District and Sessions Judge, Trichy, and quash the same against the petitioner.

2.The respondent herein filed C.C.No.645 of 2001 on the file of the Judicial Magistrate No.II, Tiruchirappalli, under Section 138 of Negotiable Instruments Act. On 23.06.2006, since the respondent did not appear before the Court, it led to the acquittal of the accused. Questioning the same, on 23.12.2011, the respondent filed Criminal Revision Petition before the Principal District and Sessions Judge, Trichy. Notice was issued to the respondent. But the summons were returned with the endorsement that the first respondent died. Therefore the respondent herein filed an application for amending the cause title, to include the present revision petitioners, who, according



to the respondent are the other partners of the accused firm. This application was strongly opposed by the revision petitioners on the ground that there is no provision to amend the cause title in a criminal complaint.

3. The learned counsel for the petitioners further contended that they are not partners in the said firm, but the learned Principal District and Sessions Judge, Trichy, by the order dated 25.09.2012 allowed the said Crl.M.P.Nos.812 and 813 of 2012 filed by the respondent herein. Questioning the same present Criminal Original Petition has been filed here.

4. There is no representation for the respondent herein.

5. From the records it is seen that the revision petitioners were not shown as accused at the first instance. In other words, in C.C.No.645 of 2001 on the file of the Judicial Magistrate No.II, Trichy, they were nowhere on record. The said C.C.No.645 of 2001 came to be dismissed. In the said C.C.No.645 of 2001, on account of the absence of the complainant, the accused were acquitted. The Revision Court was moved after a long delay. By then, the person, who was shown as accused and who was representing the firm, had passed away. In such circumstances, the revision petitioners herein were sought to be roped in. The learned counsel for the revision petitioners contended that the revision petitioners were not the original accused no where they shown as partners before the trial Magistrate. The question of bringing them on record in place of the deceased accused partner will not arise at all.

6. Even though what was filed in this case was only a criminal revision, it should be termed only as an appeal. Since it was an acquittal recorded in terms of Section 256 of Cr.P.C, Section 394 of Cr.P.C will come into play. When the accused passed away, the appeal would stand automatically abated. The question of bringing the revision petitioners in place of the deceased does not arise. Hence, the order made in Crl.M.P.Nos.812 and 813 of 2012 dated 25.09.2012 is set aside and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

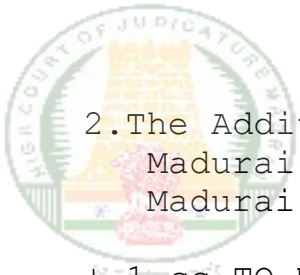
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Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Principal District and Sessions Judge, Trichy.



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc TO Mr.T.Senthil kumar , Advocate in SR No. 59606

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