

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM

THE HON'BLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P.No.5567 of 2015
and
M.P.No.1 of 2015

K.Uma
W/o.Late Kannan

...Petitioner/Accused-3

vs.

Viswanathan
S/o.Murugasamy

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order dated 14.02.2014 in Crl.M.P.No.362 of 2013 in STC No.3245 of 2007 on the file of learned Judicial Magistrate II, Tirupur.

For Petitioner : Mr.H.Rajasekar

O R D E R

This petition is filed to set aside the order passed in Crl.M.P.No.362 of 2013 in S.T.C.No.3245 of 2007 on the file of learned Judicial Magistrate II, Tirupur.

2. Heard the learned counsel for the petitioner.

3. It is submitted by the learned counsel for the petitioner that the respondent/complainant filed the above private complaint under section 138 of the Negotiable Instruments Act against M/s.Sri Lakshmi & Co., a partnership firm represented by its partner R.Kannan and also impleaded R.Kannan and the petitioner herein in the capacity of partners of M/s.Sri Lakshmi & Co. as accused. During the pendency of the trial, the said Kannan died and as per the complaint in S.T.C.No.3245 of 2007, the said Kannan was representing the partnership firm. After the death of Kannan, an application for amendment to amend the cause title by making the petitioner as representative of the partnership firm was filed by the complainant/respondent and that application was allowed and challenging the same, this petition is filed.

4. Learned counsel further submitted that the petitioner was never worked as a partner in M/s.Sri Lakshmi & Co. and that was also proved through the cross-examination of the complainant and also marking of partnership deed. Learned counsel, therefore, submitted that the petitioner was not a partner of M/s.Sri Lakshmi & Co. and she cannot represent the partnership firm as Managing Partner and therefore, the application for amendment to amend the cause title by making the petitioner as representative of the partnership firm is liable to be set aside. Learned counsel also submitted that the trial Court also without passing a reasoned order, allowed the application in one sentence and therefore, the order is liable to set aside on that ground.

5. Though the learned Judicial Magistrate was not justified in allowing the application without giving any reason, having regard to the facts of the case, I am not inclined to set aside the order under challenge and remand the case to the trial Court on the ground that the learned Judicial Magistrate has not passed a reasoned order. Though it is submitted by the learned counsel for the petitioner that the petitioner was not a partner of M/s.Sri Lakshmi & Co. and therefore, cannot be made to represent the partnership firm as Managing Partner, admittedly the petitioner was arrayed as one of the partners of M/s.Sri Lakshmi & Co. and the another partner viz., Kannan, was arrayed as A2 and he was representing the partnership firm. Now the said Kannan is dead and therefore, the application was filed by the complainant to make the petitioner as representative of the partnership firm. Whether the petitioner is a partner in M/s.Sri Lakshmi & Co. has to be decided during trial and if the petitioner is able to prove that she is not a partner of M/s.Sri Lakshmi & Co., she cannot become responsible as a partner or Managing Partner representing the firm. Therefore, now it cannot be contended that the petitioner is not a partner and therefore, she cannot be made to represent the partnership firm as a partner. As stated supra, the question has to be decided by the trial Court as to whether the petitioner is a partner of M/s.Sri Lakshmi & Co. and if the petitioner is able to prove that she is not a partner, then she would be entitled to get an order in her favour.

This Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

TO

The Judicial Magistrate No.II, Tirupur.

Cr1.O.P.No.5567 of 2015

JSV (CO)
Eu 16.03.15



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