

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.30386 of 2011

and

M.P.No.1 of 2011

A.Muthu & Co.,
Rep. by its Partner K.A.Muthusamy,
Pachampalayam, Bhavani Taluk,
Erode District. .. Petitioner/Complainant
vs.

- 1.Sri Maruthi Processors,
Salem Main Road,
Opp. To K.P.T. Petrol Bunk,
Komarapalayam, Tiruchengode Taluk,
Namakkal District.
- 2.R.Palanisamy,
Partner Sri Maruthi Processors,
5/1220, Pillayarkovil Thottam,
Lakshmi Nagar, Mettunasuvampalayam,
Sri Vasavi College Post, Erode Taluk.
- 3.P.Kamalam
Partner Sri Maruthi Processors,
5/1220, Pillayarkovil Thottam,
Lakshmi Nagar, Mettunasuvampalayam,
Sri Vasavi College Post, Erode Taluk. ... Respondents /
Accused Nos.1 to 3

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the order dated 03.06.2011 made in Crl.M.P.No.12579 of 2010 in S.T.C.No.2502 of 2009 on the file of the Judicial Magistrate, Bhavani, set aside the same by allowing this criminal original petition.

For Petitioner : Mr.N.Manokaran

For Respondents : No Appearance

JUDGMENT

The petitioner herein aggrieved over dismissal of his application seeking for an amendment of Cause Title of his complaint in STC. No.2502 of 2009 on the file of the learned Judicial Magistrate Court at Bhavani, has filed this instant Criminal Original Petition challenging the said order of dismissal dated 03.06.2011.

2.The sum and substance of this Criminal Original Petition

as follows that the petitioner herein is also the petitioner in the above STC.No.2502 of 2009 and that the first respondent is a partnership firm doing business in the name and style of Sri Maruti processors. The second and third respondents are its partners.

3. According to petitioner, the 1st respondent is the firm and respondents 2 and 3 herein are its partners. The 2nd and 3rd respondent for and on behalf of 1st respondent firm borrowed a sum of Rs.80,000 and also incurred business liability of Rs.1,98,941. Towards said liability the second and third respondents issued three cheques totally amounting Rs.2,80,000/. However when the above cheques were presented as per the instruction of the respondent, they were returned unpaid for want of sufficient funds. Thereupon statutory notice was issued calling upon the respondents to pay the amount defaulted. However, even then as there was no payment made by the respondents, the petitioner filed the above STC.No.2502 of 2009 under Section 200 of Cr.P.C. for an alleged offence punishable under Section 138 of N.I. Act.

4. It is the further case of the petitioner that after filing of the said complaint it was noticed by him that in the Short Cause Title and Long Cause Title of his complaint, the 3rd respondent's name was non-mentioned in capacity as partner. Therefore he filed a C.M.P.No.12579 of 2010 seeking for amendment of the cause title in as much as stating the third respondent as represented as partner. However the learned Trial Judge without proper appreciation of material facts and law dismissed the application vide the impugned order dated 03.06.2012 holding the petitioner's application lacked certain particulars.

5. I heard Mr.N.Manokaran, learned counsel for the revision petitioner and perused the materials available on record. There is no representation on behalf of the respondents.

6. The learned counsel for the petitioner would submit that the above defective non-mentioning as "Partner" preceding 3rd respondent's name in the cause title is due to inadvertence and oversight.

7. The learned counsel for the petitioner would also submit that the finding of the trial court while dismissing the petitioner's application holding that the amendment application has not contained the material particulars as to how the 3rd respondent is liable for default is unwarranted as it would

touch the merits and demerits of the case.

8.It is his further contention that allowing of the above application will in no way prejudice the respondent/accused.

9.Admittedly the application is the one for amendment of cause title and in this regard on perusal of complaint this Court find sufficient averments projected as against the 3rd respondent to be acting as director and representing the 1st accused firm.

10.The complaint further states that the loan was raised by the 2nd and 3rd respondents in favor of the 1st respondent firm. In my considered opinion the above categorical pleading would be sufficient to allow the application of the petitioner. More so, such amendment will also not prejudice the respondents in any way.

11.In this regard, the findings of the Court below that the amendment application was formal, lacking particulars as to how the 3rd respondent was in-charge of the 1st respondent firm and as to how she is liable to discharge the loan lent by the petitioner is erroneous and would show the non appraisal of the pleadings of the main complaint.

12.At the cost of repetition, it is worthwhile to state that categorically the complaint levels allegations as against the respondents 2 and 3 equally. Therefore this Court has no hesitation to set aside the impugned order by allowing the proposed amendment of cause title.

13.Again the amendment proposed neither change the nature nor relief nor introduce new facts nor withdraw any admission. The application is exclusively sought to amend the cause title of the complaint.

14.For the foregoing reasons, this Criminal Original Petition is allowed and the impugned order made in CrI.M.P.No.12579 of 2010 in S.T.C.No.2502 of 2009, dated 03.06.2011 on the file of the learned Judicial Magistrate, Bhavani is hereby set aside. Consequently, connected miscellaneous petition is closed.

vs

Sd/-/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To
The Judicial Magistrate,
Bhavani.

+1cc to Mr.N.Manokaran, Advocate SR.NO.20120

sm:2.11.2018

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