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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP No.17883 of 2023
and Crl.MP.Nos.11773 and 11775 of 2023

S.Manivannan
Rep.by its Managing Partner
M.M.Traders
No.79/1, Gandhi Street
Alangattu Valasu
Muthoor Main Road
Modakurichi P.O.
Erode-638 104.

...Petitioner/ Accused

.Vs.

Mr.Digvijay Singh Chouhan
Rep.by authorized signatory and
Special Power of Attorney
M/s.Gipsy Management Pvt. Ltd.,
TL-5, 3rd Floor, Khaleeli Centre
149, Montieth Road
Egmore, Chennai-600 008.

.. Respondent /Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.3 of 2019, on the file of the learned IV Fast Track Magistrate, George Town Chennai and to set aside the order passed by the learned IV Fast Track Magistrate in Crl.MP.No.1729 of 2023 in C.C.No.3/2019.

For Petitioner : Mr.M.Murali

For Respondent : Mr.D.Magesh Kumar

**ORDER**

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This petition has been filed challenging the Order passed by the Court in CrI.MP.No.1729 of 2023, dated 22.6.2023 allowing the application filed by the respondent/complainant seeking for amendment of the short cause title and long cause title.

2.Heard Mr.M.Murali, learned counsel for the petitioner and Mr.D.Magesh Kumar, learned counsel for the respondent.

3.The respondent/complainant initiated a private complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881. As per the complaint, the respondent is said to have had some business transactions with the petitioner and as a result, there was some liability on the part of the petitioner. Towards this liability, a cheque was issued by the petitioner and when the same was deposited, it was returned with an endorsement "funds insufficient". After issuing the statutory notice, the complaint came to be filed before the Court below.

4.The case was at the stage of passing final judgment in the complaint. At that stage, the respondent filed an application seeking for amendment of the short cause title and long cause title. The same was resisted by the petitioner on the ground that such an amendment is not maintainable and that if such an amendment is allowed it will completely take away the defence



of the petitioner. The Court below on considering the rival claims, came to a conclusion that the amendment has to be allowed and that it will not cause any prejudice to the petitioner. The Court below imposed cost of Rs.3,000/- to be paid by the respondent to the petitioner. Aggrieved by the same, the present petition has been filed before this Court.

5.It will be relevant to take note of the legal notice that was issued by the respondent to the petitioner. This notice is dated 28.9.2018 and it was addressed to the petitioner in the following manner:

M.M.Traders
Rep.by S.Manivannan Managing Partner
No.79/1, Gandhi Street,Alangattu Valasu
Muthoor Main Road, Modakurichi P.O
Erode-638 104.

6.While filing the complaint before the Court below, the petitioner was shown in the cause title in the following manner.

Mr.S.Manivannan
Rep.by its Managing Partner
M/s.M.M.Traders

No.79/1, Gandhi Street, Alangattu Valasu
Muthoor Main Road, Modakurichi P.O
Erode-638 104.

The accused is Mr.S.Manivannan, Managing Partner
M/s.M.M.Traders, Arun, No.79/1, Gandhi Street, Alangattu Valasu,
Muthoor Main Road, Modakurichi P.O., Erode-638 104. The address of



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service of all notices and processes on the Accused is the same as above.

7.Submissions were made on either side touching upon the liability and the manner in which the transactions had taken place. It is not necessary for this Court to go into those details and it is not relevant for the purpose of deciding this petition.

8.The main defence that has been raised by the learned counsel for the petitioner is that the cheque was issued by the Firm and the Firm was not made as an accused in this case and therefore, the complaint cannot be prosecuted against the partner since it is not in compliance with Section 141 of the Negotiable Instruments Act, 1881.

9.It must be borne in mind that the respondent was aware about the manner in which he had described the petitioner/accused in the complaint. At the fag end of the proceedings when the case was at the stage of final judgment, the present application came to be filed.

10.The respondent had issued the statutory notice before instituting the complaint in the name of M.M.Traders represented by its Managing Partner. However, while describing the petitioner in the cause title, it has been described as S.Manivannan, Managing Partner, M/s.M.M.Traders. At the best,



if at all there was a mistake in describing the petitioner, it can only confine itself to the way in which it was described when the statutory notice was issued to the petitioner. However, the respondent by virtue of the amendment has now brought in two accused persons viz., the Partnership Firm and the Partner. Such an attempt made by the respondent and that too at the fag end of the proceedings, should not have been entertained since it virtually takes away the defence raised by the petitioner.

11.The Court below seems to have been swayed by the fact that the petitioner is the Managing Partner and therefore, no prejudice will be caused to the petitioner if the amendment petition is allowed. However, the Court below did not realise that in the place of one accused, yet another accused is now being added and as per the amendment, there are now two accused persons shown in the complaint. This can never happen by virtue of an amendment in the cause title.

12.In the light of the above discussion, the order passed by the Court below in CrI.CMP.No.1729 of 2023, dated 22.6.2023 is modified and the petitioner shall be described in the complaint as M.M.Traders represented by its Managing Partner Mr.S.Manivannan. This is in view of the fact that the statutory notice was issued in this manner and there is obviously a mistake while reproducing it in the cause title since in the cause title it has been stated as S.Manivannan represented by its Managing Partner M/s.M.M.Traders



instead of M/s.M.M Traders represented by its Managing Partner
S.Manivannan.

13.It will be left open to both the parties to raise all the grounds before the Court below and the same will be considered on its own merits and in accordance with law. The proceedings in C.C.No.3 of 2019, on the file of IV Fast Track, Metropolitan Magistrate, George Town, Chennai, shall be disposed of within a period of **six weeks** from the date of receipt of copy of the order. Consequently, connected miscellaneous petitions are closed.

24.01.2024

Speaking Order/Non-Speaking Order
Index: Yes/No
Internet: Yes/No
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7



To

IV Fast Track Magistrate,
George Town, Chennai.



8

N.ANAND VENKATESH.J.,

kp

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