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Crl.R.C.No.1554 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1554 of 2024

and

Crl.M.P.No.12954 of 2024

Mahalingam

... Petitioner/Complainant

Vs.

Sampath,
Partner (Sampath Agencies),
S/o.Late Krishnan,
Dealers B.P.C. Ltd., Samiyapuram Koot Road,
Pappireddipatti Post,
Dharmapuri District.

... Respondent/Accused

Prayer: Criminal Revision Petition filed under Sections 438 and 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the order dated 05.08.2024 passed in Crl.M.P.No.4038 of 2024 in S.T.C.No.319 of 2024 on the file of learned Judicial Magistrate No.I, Krishnagiri.

For Petitioner : Mr.C.S.S.Pillai
for Mr.E.C.Ramesh

For Respondent : Mr.Prakash Goklaney
for Mr.P.Muralidharan

ORDER



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This petition has been filed seeking to set aside the order dated 05.08.2024 passed in Crl.M.P.No.4038 of 2024 in S.T.C.No.319 of 2024 on the file of learned Judicial Magistrate No.I, Krishnagiri.

2.The petitioner/complainant has filed a private complaint against the respondent for offence under Section 138 of the Negotiable Instruments Act in S.T.C.No.319 of 2024 on the file of learned Judicial Magistrate No.I, Krishnagiri, in which, he filed a petition in Crl.M.P.No.4038 of 2024 seeking to amend the “small cause title” and “long cause title”, wherein the respondent/accused has been described as Sampath, Partner (Sampath Agencies), S/o.Late. Krishnan, instead of Sampath, Proprietor (Sampath Agencies), S/o.Late. Krishnan for the reason that respondent was running two business entities in the name of Sampath Agencies, one as Proprietorship concern and another as Partnership Firm. As regards the petitioner, he was made to understand that Sampath Agencies was a partnership firm and for that reason, in the statutory notice as well as in the complaint, proof affidavit and all other proceedings he has mentioned respondent/Sampath as Partner, Sampath Agencies.



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3.The respondent filed a quash application before this Court in Crl.O.P.No.7090 of 2023 and at that time it was submitted on behalf of the respondent that Sampath Agencies has got two entities, one as proprietorship concern and another as partnership firm. As regards the bank account, which is maintained in State Bank of India, Pappireddipatti Branch, Dharmapuri, it is a Proprietorship concern and in Karur Vysys Bank, Pappireddipatti Branch, Dharmapuri, it is a Partnership firm. The petitioner/complainant, who is the respondent in the quash application, then only came to know about the same and thereafter, he filed the amendment petition.

4.The learned counsel for petitioner submitted that the trial Court in the impugned order recorded that High Court held that by making correction/amendment in the name of complainant, accused and bank, the nature of the case would not affected but the petitioner projected the respondent as partner of Sampath Agencies and now changing the respondent as proprietor of Sampath Agencies, which would change the nature of complaint and hence, dismissed the petition, which is not proper.

5.In support of his contention, the petitioner filed a typed set of papers



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listing High Court order in Crl.O.P.No.7090 of 2023, the evidence and the letter received from Karur Vysys Bank, Pappireddipatti branch, dated 09.09.2021, letter received from State Bank of India, Pappireddipatti branch, dated 22.09.2022 confirming that Sampath Agencies is maintaining Current Account No.31080143818 as Proprietorship concern and Sampath is its Proprietor and the cheque/Ex.P1 issued by State Bank of India and that is the reason the petitioner/complainant has filed the above petition. Since the offence under Section 138 of the Negotiable Instruments Act is a technical offence, the petitioner not to commit any technical error and give leverage to the respondent/accused has filed the above petition. Amending the cause title from Partner to Proprietor would noway affect the nature of the case and no prejudice would be caused to the petitioner.

6.In support of his contention, the learned counsel relied upon the following judgments:

- (i) *M/s.Egmore Benefit Society Ltd., rep by its Authorised person K.Mohandoss, Chennai vs. K.Balasigamani, Proprietor Ramu & Company, Chennai* reported in 1998 (2) CTC 372;
- (ii) *U.P. Pollution Control Board vs. Modi Distillery & Others* reported



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in 1987 (3) SCC 684.

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7.Mr.Prakash Goklaney, learned counsel for respondent filed a typed set of papers and submitted that the transaction is of the year 2015. In a deceitful manner cheque was received from one Kavitha. This cheque was misused and a false case was filed against the respondent. He further submitted that the respondent was granted huge sum of Rs.20 lakhs as loan would not novelise of the nature of the Sampath Agencies, whether it is a Proprietorship concern or Partnership firm. During cross examination of the petitioner, he reiterates that Sampath Agencies is a partnership firm with partners. Further in the reply/Ex.D2, the respondent had clearly mentioned that Sampath Agencies is a proprietorship concern. Despite the same, the petitioner chosen to proceed against the respondent as partnership firm and now changing the stand would only amount to filling up of *lacuna* after coming to know that petitioner's complaint might be dismissed, which cannot be permitted when the case is at the stage of arguments. Hence, opposed the same.



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8.Considering the submissions made and on perusal of the materials, it is seen that the admitted position of the respondent is M/s.Sampath Agencies has got two accounts, one in State Bank of India, Pappireddipatti branch as proprietorship concern and another in Karur Vysys Bank, Pappireddipatti branch as partnership concern and this according to the petitioner came to his knowledge only at the time of quash application by the respondent in Crl.O.P.No.7090 of 2023, which was dismissed on 23.01.2024. In the quash application, this Court recorded that the fact as to whether Sampath Agencies is a proprietorship concern or a partnership Firm, cannot be gone into in a quash application under Section 482 of Cr.P.C., which denotes that the same to be decided during trial. The letter of Karur Vysya Bank and State Bank of India were marked as Exhibits in this case and now evidence have been let in. In view of the bank document showing that the cheque/Ex.P1 belongs to Sampath Agencies Proprietorship concern, this Court finds correction of name of the respondent/accused from Partner to Proprietor of Sampath Agencies would noway change the character of the complaint and no prejudice would be caused to the petitioner.



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9. In view of the same, the impugned order passed in Crl.M.P.No.4038 of 2024 in S.T.C.No.319 of 2024 dated 05.08.2024 by the learned Judicial Magistrate No.I, Krishnagiri is set aside. The trial Court is directed to make corrections in the cause-title, i.e., amend the name of respondent from Partner of M/s.Sampath Agencies to Proprietor of M/s.Sampath Agencies.

10. The learned counsel for respondent sought leave of this Court that in view of the change in the cause title, he might reserve his right for further cross examination and he may be permitted for cross examination.

11. The learned counsel for petitioner strongly objected to the same and submitted that it is only a cosmetic correctional change and not the character and nature of the case. It is a dilatory tactics adopted by the respondent to further protract the case at the penultimate stage of advancing arguments.

12. This Court left it open to the trial Court to decide on its own merits, if any such petition is filed by the respondent. In any event, the trial Court is directed to complete the proceedings in S.T.C.No.319 of 2024 within a period



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of two months from the date of receipt of a copy of this order.

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13. With the above directions, the Criminal Revision Case is allowed.

Consequently, connected Criminal Miscellaneous Petition is closed.

19.09.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Note: Issue order copy on 20.09.2024.

To

1. The Judicial Magistrate No.I,
Krishnagiri.

2. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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