

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.26158 of 2012 & Crl.M.P. No.10196 of 2016

Yogalakshmi Sukumaran

Petitioner

vs.

G. Seenu

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records relating to C.C. No.2375 of 2012 on the file of the V Metropolitan Magistrate, Egmore, Chennai 600 008 and to quash the same.

For petitioner Mr. C. Prabakaran

For respondent Mr. R. Rajasekaran

ORDER

This Criminal Original Petition has been filed seeking to call for the records relating to C.C. No.2375 of 2012 on the file of the V Metropolitan Magistrate, Egmore, Chennai 600 008 and to quash the same.

2 For the sake of convenience, the parties are referred to by their name.

3 One Seenu, the respondent herein, initiated prosecution against Yogalakshmi Sukumaran under Section 138 of the Negotiable Instruments Act, 1881, in C.C.No.2375 of 2012 and the same is now pending on the file of the V Metropolitan Magistrate, Egmore, Chennai, challenging which, Yogalakshmi Sukumaran is before this Court.

4 Heard Mr. Prabakaran, learned counsel for Yogalakshmi Sukumaran and Mr. Rajasekaran, learned counsel for Seenu.

5 Mr. Prabakaran, learned counsel, submitted that Yogalakshmi Sukumaran does not know Seenu at all; that she had given the cheques in question to one Ashok Kumar; that the said Ashok Kumar had, in turn, handed over the cheques to Seenu, based on which, Seenu has presented the cheques and after the said cheques having been dishonoured, Seenu has launched the aforesaid prosecution. In this regard, Mr. Prabakaran, learned counsel, relied upon the reply notice dated 09.06.2011 that has been issued on behalf of Yogalakshmi Sukumaran in response to the statutory notice issued by Seenu under Section 138 of the Negotiable Instruments Act.

6 In the considered opinion of this Court, these are disputed questions of fact, which cannot be gone into in a petition under Section 482, Cr.P.C.

7 Secondly, Mr. Prabakaran, learned counsel submitted that the cheque number in the complaint is given as 7213111 dated 04.02.2011 for Rs.3 lakhs, whereas, in the statutory notice dated 02.06.2011 issued by Seenu, the cheque number has been given as 723111.

8 This argument also, in the considered opinion of this Court, will not be of any use, because, the very cheque was before the Court when cognizance of the offence was taken.

9 Lastly, Mr. Prabakaran, learned counsel, submitted that the statutory notice dated 02.06.2011 issued by Seenu suffers from a serious error which will vitiate the entire proceedings. He submitted that, in the statutory notice dated 02.06.2011, the complainant has not given the amount of the cheque dated 04.02.2011, which is essential for the accused to act upon within the statutory period.

10 *Per contra*, Mr. Rajasekaran, learned counsel, submitted that the said irregularity is not a serious one for this Court to interfere for quashing the prosecution.

11 This Court gave its anxious consideration to the rival submissions.

12 In the considered opinion of this Court, a statutory notice under Section 138 of the Negotiable Instruments Act must disclose the minimum

particulars such as the amount covered by the dishonoured cheque and only if the accused fails to return the amount within one month from the date of receipt of the notice, can a prosecution be initiated. In the instant case, the statutory notice dated 02.06.2011 does not contain the amount covered by the dishonoured cheque bearing no.723111 dated 04.02.2011. Therefore, Yogalakshmi Sukumaran cannot be prosecuted for the dishonour of cheque no.723111 dated 04.02.2011 for Rs.3 lakhs.

13 As regards the other cheque bearing no.723112 dated 08.02.2011 for Rs. 2 lakhs, the prosecution can proceed against Yogalakshmi Sukumaran as there is no infirmity in the statutory notice.

In the result, this Criminal Original petition is partly allowed. The prosecution in respect of cheque no.723111 dated 04.02.2011 alone is quashed. It is made clear that the observations made herein are only for the limited purpose of deciding this Quash Application and the Trial Court shall proceed with the trial uninfluenced by any of the observations made herein. It is also made clear that all defences are left open for the accused to be taken before the Trial Court. Connected M.P. is closed.

16.11.2016

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To

- 1 The V Metropolitan Magistrate
Egmore
Chennai 600 008
- 2 The Public Prosecutor
Madras High Court
Chennai 600 104

P.N. PRAKASH, J.

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