

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2018

Coram:

The Honourable Mrs. Justice R. HEMALATHA

Cr1.O.P.No.17398 of 2013
and
M.P.Nos.1 & 2 of 2013

1.M/s.Eashwar Leather Exports,
Rep. by Mrs.K.T.Chinthamani, Partner
2.Mrs.K.T.Chinthamani, Partner
3.R.Suresh @ Subramani, Partner
...Petitioners/Accused

Versus

S.Sowhar Sadiq
Proprietor - M/s.S.N.Leather Exports,
No.71/6, Wuthucattan Street,
Periamet,
Chennai - 600 003.
...Respondent/Defacto Complainant

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the records in C.C.No.1074 of 2012 on the file of VIII Metropolitan Magistrate, George Town, Chennai and quash the entire proceedings.

For Petitioners : Mr.R.Muniyapparaj

For Respondent : Mr.C.Parthiban

ORDER

The petitioners are accused in C.C.No.1074 of 2012 on the file of the VIII Metropolitan Magistrate, George Town, Chennai. The respondent filed a private complaint before the VIII Metropolitan Magistrate, Chennai under Section 200 Cr.P.C for an alleged offence punishable under Section 138 of the Negotiable Instruments Act.

2. The brief case of the respondent/complainant is as follows:

The accused though received various amounts for the leather goods purchased by the complainant did not deliver the goods and returned only a sum of Rs.3,58,000/- and issued a cheque bearing No.617823 dated 14.07.2011 for Rs.8,00,000/- drawn on Canara Bank, Park Town Branch, Chennai. When the cheque was presented for encashment through the complainant's bankers namely Punjab National Bank, Park Town, Chennai, the same was returned for the reason "insufficient funds". Thereafter a notice dated 07.02.2012 was issued to the accused and even though the accused received the said notice, did not come forward to make good the payment. Therefore, the complainant filed a complaint against the accused for an alleged offence under Section 138 of the Negotiable Instruments Act.

3. Mr.R.Muniyapparaj, learned counsel appearing for the petitioners would contend that though the cheque was issued on behalf M/s.Eshwar Leather Exports, the respondent/complainant did not issue any notice to the said firm and therefore, the entire C.C.No.1074 of 2012 is liable to be quashed.

4. A perusal of the legal notice dated 07.02.2012, clearly shows that a notice was issued to M/s.Eashwar Leather Exports represented by its partners one Mrs.K.T.Chinthamani and Mr.R.Suresh @ Subramani. Therefore, I do not find any infirmity in the notice issued by the respondent/complainant to the petitioners.

5. Another contention of the learned counsel appearing for the petitioners is that the complainant though accepted payment of Rs.1 Lakh by the accused in his rejoinder dated 19.03.2012, had falsely contended that it was for M/s.Mangal Leather Private Limited a sister concern of the complainant with whom the accused allegedly had transactions. His specific contention is that this is not mentioned in their legal notice dated 07.02.2012. A perusal of the rejoinder dated 19.03.2012, shows that the respondent/complainant has clearly averred that all the allegations contained in the reply notice are false and that the petitioners had a different transaction with their sister concern, M/s.Mangal Leather Private Limited.

6. A perusal of the complaint in C.C.No.1074 of 2012 shows that there are prima facie materials available on record to proceed further against the petitioners herein and all the allegations levelled by the petitioners are disputed question of fact, which cannot be gone into at this stage.

8. As regards alleged payments made by the petitioners, this Court cannot conduct a roving enquiry at this stage to find out the truth or otherwise of the reply notice sent by the accused or the rejoinder sent by the respondent/complainant.

9. At this juncture, learned counsel appearing for the petitioner would contend that the second petitioner is a lady aged about 60 years and that the third petitioner had undergone an Open Heart Surgery recently and requested the Court to dispense with their personal appearance before the Trial Court. Considering his request, the personal appearance of the petitioners/Mrs.K.T.Chinthamani and Mr.R.Suresh @ Subramani are dispensed with. However, they should appear before the VIII Metropolitan Magistrate, George Town, Chennai as and when their presence is required. In the facts and circumstances of the present case, I do not find any reason to quash the proceedings and accordingly the petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The VIII Metropolitan Magistrate,
George Town,
Chennai,

2.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.RMR Indian Law Firm, Advocate, S.R.No.46891

+1cc to Mr.C.Parthiban, Advocate, S.R.No.47105

Crl.O.P.No.17398 of 2013

GSP (03/08/2018)