

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :05.04.2019

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Criminal Original Petition Nos.5741 and 5742 of 2017
and
Crl.M.P.Nos.4312, 4313, 4314 and 4315 of 2017

Mrs.Rosy Usha Melvin Edward .. Petitioner in
Crl.O.P.No.5741/2017/
Sole Accused

Mr.Melvin Edward,
Proprietor AVJ Electronics
No.33, Subramaniapuram,
Dr.Murthy Road,
Kumbakonam 612 001. .. Petitioner in
Crl.O.P.No.5742/2017/
Sole Accused

/versus/

M/s Green Dart Services
Rep.by its Partner Mr.Sriram Kannan
No.92/1A, Saraswathi Nagar Main Road,
Valasaravakkam, Chennai 600 087. .. Respondent in
both cases/Complainant

Crl.O.P.No.5741/2017: Criminal Original Petition filed under
Section 482 of the Criminal Procedure Code to call for the
records in S.T.C.No.12 of 2017 on the file of the Court of the
Judicial Magistrate-Fast Track Court, Magisterial Level,
Poonamallee and quash the same.

Crl.O.P.No.5742/2017: Criminal Original Petition filed under
Section 482 of the Criminal Procedure Code to call for the
records in S.T.C.No.11 of 2017 on the file of the Court of the
Judicial Magistrate-Fast Track Court, Magisterial Level,
Poonamallee and quash the same.

For Petitioner :Mr.Sai Krishnan for
(both cases) M/s Sai Bharath and Ilan
For Respondent :Mr.P.V.Balasubramaniam for
(both cases) M/s BFS Legal D Ferdinand

COMMON ORDER

Heard the learned counsel appearing for the petitioners and learned counsel appearing for the respondent.

2. These petitions filed under Section 482 of the Criminal Procedure Code to quash the private complaints filed by the respondent herein, pursuant to dishonour of the cheques issued by the petitioners herein in the respective cases.

3. The sole point canvassed in these petitions and also convinced by this Court is that the statutory notice issued by the complainant does not reflect the correct cheque amount for which the prosecution has launched.

4. As far as S.T.C.No.12 of 2017 filed by M/s Green Dart Services-respondent herein is concerned, it is against Mrs Rosy Usha Melvin Edward. This complaint is in respect of cheque bearing No.001082 dated 21.12.2012 drawn on Corporation Bank, Kumbakonam Branch for a sum of Rs.4,80,000/-. Whereas the statutory notice dated 18.01.2015 addressed to M/s Melvin Edward indicates that the cheque bearing No.547063 drawn on Corporation Bank for a sum of Rs.10,00,000/- was returned for "insufficient fund" and the petitioner/accused herein called upon to pay Rs.10,00,000/- or to face the consequences.

5. Similarly, in S.T.C.No.11 of 2017 filed against Mr. Melvin Edward, Proprietor, AVJ Electronics, the complaint is for cheque bearing No.547063 dated 22.12.2012 drawn on Corporation Bank, Kumbakonam for Rs.10,00,000/-. Whereas, the statutory notice dated 18.01.2015 addressed to Mr.Melvin Edward, Proprietor, AVJ Electronics indicates that for the cheque bearing No.001082 drawn on Corporation Bank, Kumbakonam for Rs.4,80,000/- which was returned for insufficient fund, notice is caused calling upon Mr.Melvin Edward to pay a sum of Rs.4,80,000/- or to face the consequences.

6. Apparently the statutory notice does not reflect the cheque number or amount for which the criminal prosecution has launched.

7. Learned counsel appearing for the respondent would submit that both the petitioners are husband and wife. Due to inadvertence the notice got interchanged and sent to the wrong person with right details interchanging their names. In any event, the spirit of Section 138 of Negotiable Instruments Act, 1881 which contemplates statutory notice, has been fully satisfied. The accused have received the notice and replied to the statutory notice. Therefore, no prejudice is caused to the accused.

8. This Court is unable to countenance the said

submission of the learned counsel appearing for the respondent. When law prescribes the procedure to be followed in a particular manner, any deviation or violation of the said procedure will vitiate the entire proceedings. As far as Section 138 of the Negotiable Instruments Act, 1881 is concerned, it is mandatory on the part of the complainant to demand the drawer of the cheque through written notice the payment of the cheque amount which has been dishonoured. In this case, on the face of it, it is seen that no such demand was made to the accused. If it is due to inadvertence the name has been interchanged, at least before expiry of the statutory period of limitation, the same should have been cured by the complainant. Since the inherent defects in the statutory notice is not cured, the complaint is unsustainable for want of cause of action. Hence, this Court finds merits in these Original Petitions. Accordingly, these Criminal Original Petitions are allowed.

9. The order passed in these Criminal Original Petitions, resulting in dismissal of the private complaints, will not stand in the way of the complainant/respondent to take recourse to any other legal remedy available to him. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Judicial Magistrate-Fast Track Court, Magisterial Level,
Poonamallee

+1cc to M/s.BFS LEGAL, Advocate SR.No.33155

+2cc to Mr.Sai Bharath, Advocate SR.No.34177,34178

Cr1.O.P.Nos.5741 & 5742 of 2017

RSI (CO)
GMY (21/05/2019)