

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 343 of 2010

With

C.R.R. No. 344 of 2010

Judgment On: 07-04-2010.

Newport Express Services Private Limited & Ors

versus

The State Of West Bengal & Anr

POINTS:

QUASHING-Dishonor of cheque-Mis-description of the complainant's company in the cause title of the petition of complaints-Mistake a clerical mistake and purely bona fide-Quashing of a complaint, which is otherwise tenable in law, whether justified -Negotiable Instruments Act, 1881 S.138-Code of Criminal Procedure, 1973 S.482

FACTS:

Two separate criminal cases, against the petitioners, relating to the offence punishable under Section 138 of the Negotiable Instruments Act were instituted on complaints at the behest of the opposite party. The petitioners have now, approached this Court for quashing of the said complaint cases on the sole ground, although the payee was 'Freight Systems (India) Private Limited' but the petition of complaint has been filed describing the complainant as 'Freight Systems (India) Limited'.

HELD:

It is true that in the cause title, the complainant has been described as Freight Systems (India) Limited, however, by going through the petition of complaint, the Court finds the person through whom such complaints were filed in Court in every pages of the petition of complaints, described him and signed as the authorized signatory of Freight Systems (India) Private Limited, i.e., the payee of the cheque. In the board resolution filed by both the authorized representatives of Freight Systems it has been categorically mentioned that they have been authorized to file the said complaints and pursue the criminal proceedings arising thereof by Freight Systems (India) Private Limited. In the Vakalatnama filed, the executant has also been described as the authorized signatory of Freight Systems (India) Private Limited. Therefore, the identity of the complainant's company, the payee of the cheque has been well established by sufficient materials, which are on record. The mis-description of the complainant's company in the cause title of the petition of complaints is merely a bona fide typographical mistake, which does not touch the merits of the case.

Para-4

The error in the cause title of the petition of complaints cannot be said to have vitiated the proceeding and accordingly the question of quashing of the complaints does not at all arise.

Para-5

For Petitioners: Mr. Joy Sengupta
 Mr. Sourav Chatterjee
 Mrs. Somali Mukhopadhyay
For State: Mr. Sobhendu Sekhar Roy
For O.P. No. 2: Mr. Subrata Kr. Roy Karmakar
 Mr. Narayan Prasad Agarwal

THE COURT:

1. Since in both the aforesaid criminal revisions, a common question of law arises for decision, the same were taken up for hearing together.
Against the petitioners, two separate criminal cases relating to the offence punishable under Section 138 of the Negotiable Instruments Act were instituted on complaints at the behest of the opposite party.
2. The petitioners have now, approached this Court for quashing of the said complaint cases on the sole ground, although the payee was 'Freight Systems (India) Private Limited' but the petition of complaint has been filed describing the complainant as 'Freight Systems (India) Limited'.
3. Appearing in support of this application, Mr. Jay Sengupta, Learned Counsel for the petitioners, vehemently contended that only the payee can lodge a complaint under Section 138 of the Negotiable Instruments Act and none else. Therefore, the impugned complaint being not in accordance with law is liable to be quashed. On the other hand, both the Learned Counsels appearing on behalf of the complainant/opposite party as well as the State vehemently opposed the prayer for quashing and submitted the mistake, if any, is a clerical mistake and purely bona fide. According to them this mistake cannot be the ground for quashing of a complaint which is otherwise tenable in law.
4. I have given my anxious and thoughtful consideration to the rival submissions of the parties. Now, from perusal of both the petition of complaints, I find it is true that in the cause title, the complainant has been described as Freight Systems (India) Limited, however, by going through the petition of complaint, I find the person through whom such complaints were filed in Court in every pages of the petition of complaints, described him and signed as the authorized signatory of Freight Systems (India) Private Limited, i.e., the payee of the cheque. I further find the said complaints were initially filed by the company through its authorized representative Debasish Mukherjee and subsequently he was substituted by one Babul Samanta. The said Babul Samanta in his evidence on affidavit categorically stated that such complaint was filed by him being the authorized representative of Freight Systems (India) Private Limited. In the board resolution filed both by Debasish Mukherjee and Babul Samanta it has been categorically mentioned that they have been authorized to file the said complaints and pursue the criminal proceedings arising thereof by Freight Systems (India) Private Limited. In the

Vakalatnama filed in connection with the said cases the executant has also been described as the authorized signatory of Freight Systems (India) Private Limited. Therefore, the identity of the complainant's company, the payee of the cheque has been well established by sufficient materials, which are on record. The mis-description of the complainant's company in the cause title of the petition of complaints is merely a bona fide typographical mistake, which does not touch the merits of the case.

5. The error in the cause title of the petition of complaints cannot be said to have vitiated the proceeding and accordingly the question of quashing of the complaints does not at all arise.

6. These criminal revisions have no merit and accordingly stand dismissed by this common judgment. Interim orders, if any, stands vacated.

7. The Office is directed to send down the Lower Court Records at once. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)