

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 774 of 2014

Harbansingh s/o. Lalsingh Sethi,
Age : 55 years,
Occupation : Business,
R/o. Punjabi Colony, Ward No.1,
Shrirampur,
District : Ahmednagar.

.. Petitioner.

versus

Rahul s/o. Sopan Hole,
Age : 30 years,
Occupation : Business,
R/o. Near Utsav Mangal Karyalaya,
Shrirampur, Taluka : Shrirampur,
District : Ahmednagar.

.. Respondent.

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*Mr. Shaikh Mazhar A. Jahagirdar, Advocate, for
the petitioner.*

Mr. R.R. Karpe, Advocate, for the respondent.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 8TH APRIL 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. Shaikh Mazhar A. Jahagirdar for the petitioner, and Adv. Mr. R.R. Karpe for the respondent.

2. Rule. Rule made returnable forthwith. By consent, heard finally.

3. The petitioner herein happens to be the original complainant in S.T.C. No. 179/2011. The petitioner herein has issued a statutory notice to the respondent, under Section 138 of the Negotiable Instruments Act, 1881. It was specifically contended in the said notice, that the accused i.e. the present respondent had issued a cheque in favour of the complainant, dated 15-2-2011. The number of that cheque was 011223 to be drawn on ICICI Bank, Branch at Shrirampur. The accused had neither replied the notice nor had paid the amount demanded in the statutory notice. Hence, the complainant has filed a complaint under Section 138 of the Negotiable Instruments Act. The same was registered as S.T.C. No. 179/2011. The complainant had filed affidavit of evidence on 8-10-2012. The complainant was cross examined at length. In the course of cross examination, the accused has questioned correctness of the number of the cheque issued in favour of the complainant. The suggestion and the answers elicited in the cross examination are as follows :-

“ Not true to say that I never sent notice to accused regarding dishonour of cheque no. 011233 drawn on the I.C.I.C.I. Branch Shrirampur of Rs. 10,00,000/-. Not true to say that the accused never issued cheque no. 011233 in my favour. ”

The complainant had then realized that he had committed an error while filing the complaint and the cheque number mentioned in the complaint

was 011233. The same error was reiterated while filing the affidavit of evidence. The complainant was, therefore, constrained to file an application seeking amendment in the complaint to the extent of stating the correct number of the disputed cheque. The application was filed on 14-6-2013. The learned Judicial Magistrate (F.C.) [Court No.1], Shrirampur, vide order dated 2nd April 2014, has been pleased to reject the said application. Hence, this petition.

4. The learned Counsel for the petitioner submits that, in fact, it was a typographical error which was inadvertently overlooked by the complainant. According to the learned Counsel, the said error was committed by the Advocate representing the complainant and, therefore, according to him, he should not suffer the losses for the inadvertent error committed by his Advocate.

5. The learned Counsel for the respondent rightly submits that there is no provision in the Code of Criminal Procedure, 1973, for carrying out an amendment in the complaint, especially in a private complaint for statutory offence like under Section 138 of the Negotiable Instruments Act. The learned Counsel for the respondent submits that it would cause prejudice to the accused since he had disclosed his defence, that the number of the disputed cheque mentioned in the complaint as well as in the affidavit in evidence, does not match with the copy of the disputed cheque which was filed in the said proceedings. According to the learned Counsel, in the absence of any specific provision in the statute, no interference is warranted in the order passed by the learned Judicial Magistrate (F.C.).

6. It is true, that the learned Judicial Magistrate (F.C.), Shrirampur, has rightly held that in the absence of any specific provision in the statute, it would not be permissible for the court to allow amendment in the complaint. Upon perusal of the answers elicited in the cross examination of the accused, it simply appears that the accused has also suggested that no notice was issued in respect of dishonour of cheque No. 011233. Adversely it can be held that it is admitted that the notice was issued in respect of cheque No. 011223. The second answer is that the accused had never issued cheque No. 011233. Factually it is correct since disputed cheque filed along with the complaint was bearing No. 011223. Be that as it may, it is necessary to consider that no prejudice would be caused to the accused in the eventuality, the typographical error is allowed to be corrected since it is only number of the cheque which is to be corrected in the original complaint.

7. The learned Counsel for the petitioner has placed reliance upon judgment of this Court in the case of **Balasaheb s/o. Pandharinath Borade Vs. Abdulla s/o. Mohammad Bagwan**, reported in 2006(2) **Mh.L.J.** 258. The coordinate Bench of this Court [*Coram : A.H. Joshi, J.*] has held that in a complaint under Section 138 of the Negotiable Instruments Act, no prejudice would be caused to the accused if permission is granted to correct number of the cheque in the complaint. It was observed that, ‘*Since all documents are on record and the accused is not going to be taken by surprise due to the amendment / correct in question*’. It was further observed that, ‘*It cannot be said on facts of the case, that the amendment will ipso facto prejudice the defence of the accused*’.

8. The learned Counsel for the respondent has also placed reliance on the judgment delivered by High Court of Madhya Pradesh, in the case of *Lekhraj Singh Kushwah Vs. Brahmand Tiwari [Misc. Criminal Case No. 6183 of 2011, decided on July 16, 2013]*, reported in *LAWS (MPH)-2013-7-280*. The Madhya Pradesh High Court has held thus :

" A coordinate Bench cannot comment upon the discretion exercised or judgment rendered by another coordinate Bench of the same Court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, injudicial administration precedents which enunciate the rules of law from the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate Bench must be followed. "

9. It is true, that there is no specific provision in the statute. However, the complainant can be permitted to correct the number of the cheque, by exercising inherent powers under Section 482 of the Code of Criminal Procedure, 1973. However, in the interest of justice, it would be necessary to impose costs upon the petitioner.

10. In the result, the petition is allowed.

(A) The order dated 2nd April 2014, passed by the Judicial Magistrate

(F.C.)[Court No.1], Shrirampur, below Exhibit 28 in S.T.C. No. 179/2011, is hereby quashed and set aside. The application Exhibit 28 stands allowed.

(B) The petitioner herein is permitted to correct the number of the cheque in the complaint.

(C) The petitioner (original complainant) shall pay costs of Rs. 10,000/- [Rupees ten thousand] to the respondent (original accused) within a period of two weeks from today. It is made clear, that said payment of costs shall be the condition precedent for amendment to cheque number in the complaint.

11. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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