

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4025 OF 2013**

Bestways Transport (India) Pvt. Ltd. Petitioners
& Anr.

Vs.

Yazaki India Pvt. Ltd. & Anr. Respondents

Mr. Sandeep Madhukar Pathak, Advocate for the Petitioners.
Mr. Sachin B. Mhaske, Advocate for Respondent No.1.
Mr. Deepak Thakare, A.P.P. for the Respondent - State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 22nd February, 2016

P.C.

1 This petition filed by the original accused seeks two reliefs i.e. quashing of criminal complaint being Regular Criminal Case No. 0402136 of 2012 filed against the petitioners under Section 407 read with 34 Indian Penal Code and for quashing the order dtd. 30th July, 2013 passed by the trial court allowing amendment of the complaint to change the name of the complainant.

2 Petitioner no.1 is a Private Limited Company that carries on the business as transporters. Petitioner no.2 is the

Managing Director, Petitioner no.3 is it's Director and Petitioner no.4 is the authorised signatory of Petitioner no.1. The respondent filed complaint against the petitioner contending that the goods entrusted to the petitioner for the purpose of delivery have neither been delivered to the consignee nor returned to respondent no.1, consignor. The complaint was filed by "Tata Yazaki Autocomp Limited" on 11th March, 2013. Later the complainant filed the application at Exhibit '26' seeking to amend it's name in the complaint is to "Yazakin India Limited". The amendment was required since Tata Autocomp System Limited had sold their entire stake in the Company to Yazaki Corporation and it became 100% subsidiary of Yazaki Corporation, Japan. In the application, respondent no.1 had claimed that the amendment sought made no substantial change in the complaint and as such no prejudice would be caused to the accused persons.

3 Mr. Pathak, the learned advocate for the petitioners submits that the trial court erred in granting the amendment as the Criminal Procedure Code does not provide for amendments to the complaint. It is also contended that with the change in the name on sale of the entire holdings, the company of Tata Yazaki Autocomp Limited ceased to exist and there is no question of entrustment of goods by the new company to the petitioners.

He submits that the amendment of the complaint as permitted by the impugned order has caused prejudice to the petitioners.

4 Mr. Pathak submits, relying upon decision of the Apex Court in S.R. Sukumar vs. S. Sunaad Raghuram, reported in (2015) 9 Supreme Court Cases, page 609, that if the amendment sought to be made in the complaint do not relate either to a curable infirmity or the same cannot be corrected by a formal amendment and if there is likelihood of prejudice to the other side, the court can not allow such amendment in the complaint. Paragraph 19 of the judgment specifically relied upon by Mr. Pathak reads as under:

“19 What is discernible from U.P. Pollution Control Board case is that an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint.”

The decision cited cannot help the petitioners because the amendment granted is consistent with the principle laid down therein. The amendment permitted is a formal amendment, which was necessitated on account of the change in the corporate structure of the original complainant and the change in its name. As regards the prejudice claimed by the petitioners, in my opinion there is no prejudice whatsoever caused to the petitioners since there would be no change in the entire material that would be relied upon by the petitioners. Since there is no change on the facts alleged in the complaint by way of the amendment, it can also not be said that there is no entrustment by respondent no.1 to the petitioner. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)