

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-43974-2016

Date of decision: 8.12.2016

Sat Parkash Mehta

...Petitioner

Versus

Ruby Narang

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Vishal Sharma Haritwal, Advocate for the petitioner

SNEH PRASHAR, J.

This petition under Section 482 of the Code of Criminal Procedure has been filed impugning the order dated 28.11.2016 by virtue of learned Additional Sessions Judge, Hisar had allowed the application of the complainant- respondent for amendment in para no.1 of complaint as well as in the affidavit filed by her.

The facts relevant for disposal of the petition are that the complainant- respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') alleging that the petitioner (accused in the complaint) had taken a friendly loan of Rs.6 lacs from her which was given by way of an account payee cheque issued in favour of the petitioner from her account maintained with Royal Bank of Scotland, Gurgaon. It was also mentioned in the complaint that the petitioner had executed a pronote and receipt in that regard in favour of the complainant- respondent. To discharge the

alleged outstanding liability, the petitioner issued an account payee cheque of Rs.8 lacs from his account. On presentation, the said cheque was dishonoured by the Bank. When even on notice, the petitioner did not repay the amount, the complainant -respondent filed the complaint through her General Power of Attorney namely her father Pawan Narang.

During trial of the case, the complainant -respondent filed an application for amendment in the complaint as well as in the affidavit tendered in evidence stating that inadvertently it had been mentioned that the petitioner- accused had executed pronote and receipt in favour of the complainant, whereas the fact is that the pronote and receipt were executed by the petitioner in favour of General Power of Attorney of the complainant- respondent, who had filed the complaint. The application was dismissed by learned Judicial Magistrate, 1st Class, Hisar vide order dated 17.8.2016. The complainant- respondent preferred a revision petition, which was allowed by learned Additional Sessions Judge, Hisar vide impugned order dated 28.11.2016.

The submissions made by Mr.Vishal Sharma Haritwal, Advocate representing the petitioner have been heard.

It was submitted by learned counsel for the petitioner that not only in the complaint but also in the legal notice sent by the complainant it was mentioned that the pronote and receipt were executed by the petitioner (accused) in favour of the complainant. It was so stated in the statement made during trial of the complaint as well. It was after cross-examination of the witnesses that the complainant filed

the instant application for amendment.

Learned counsel contends that when the fact goes to the root of the case, it cannot be said to be a clerical mistake and such an amendment cannot be allowed.

There are no two thoughts on the preposition laid down by Hon'ble the Supreme Court in **Kunapareddy @ Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari and another 2016(3) R.C.R. (CrI.) 315** that the court has the power to allow the amendment in an appropriate case if it finds to be necessary. It is basic principle of the administration of justice that a party cannot be deprived of a legal right / relief in case his pleadings suffer from some technical / typographical defect.

The facts considered by learned Additional Sessions Judge for allowing the application for amendment are as under:-

5. From examination of record in light of aforesaid rival contention, it is crystal clear that complainant Ruby Narang through her father Pawan Narang had filed criminal complaint on 4.8.2015. Pawan Narang had filed similar complaint against Sat Parkash on same date. Due to inadvertence Ruby Narang through her father Pawan Narang had mentioned about execution of pronote and receipt in legal notice dated 15.7.2015 Ex.P5 in para no.1 of complaint and affidavit Ex.CW1/A which are required to be amended. The explanation does not smack of malafides as complainant has not gained anything. As per ratio of Kunapareddy @ Nookala Shanka Balaji

vs. Kunaparaddy Swarna Kumari and anr.s' case (supra) it is well settled that in criminal case governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings.”

Learned counsel for the petitioner has failed to demonstrate any mis-reading or mis-appreciation of the facts enumerated in his order by learned Additional Sessions Judge. The complainant does not intend to change the document or amend the date or other contents of the same. The contents of the document would certainly speak of their own. Amendment sought is only correction of the clerical mistake in putting forth the facts relating to the document in pleadings.

Thus, considering all the facts and circumstances, there appears no ground for intervention in the impugned order dated 28.11.2016 passed by learned Additional Sessions Judge, Hisar. As such, the present petition being bereft of any merit is dismissed.

8.12.2016
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No