

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4783 OF 2015
WITH
WRIT PETITION NO.4784 OF 2015
WITH
WRIT PETITION NO.4789 OF 2015
WITH
WRIT PETITION NO.4802 OF 2015

The Nashik Merchant's Co-operative Bank Ltd.
(Multistate Scheduled), through its
authorised person Mr.Sawale Sanjay Vilas

Petitioner

versus

Ramesh Vitthal Karpe and others

Respondents

WITH
WRIT PETITION NO.4785 OF 2015
WITH
WRIT PETITION NO.4790 OF 2015
WITH
WRIT PETITION NO.4791 OF 2015
WITH
WRIT PETITION NO.4803 OF 2015

The Nashik Merchant's Co-operative Bank Ltd.
(Multistate Scheduled), through its
authorised person Mr.Sawale Sanjay Vilas

Petitioner

versus

Sidhappa Balappa Ghugare and others

Respondents

WITH
WRIT PETITION NO.4786 OF 2015
WITH
WRIT PETITION NO.4799 OF 2015
WITH
WRIT PETITION NO.4800 OF 2015
WITH
WRIT PETITION NO.4801 OF 2015

The Nashik Merchant's Co-operative Bank Ltd.
(Multistate Scheduled), through its

authorised person Mr.Sawale Sanjay Vilas	Petitioner
versus	
Dattatray Kacharu Korde and others	Respondents

WITH
WRIT PETITION NO.4787 OF 2015

The Nashik Merchant's Co-operative Bank Ltd. (Multistate Scheduled), through its authorised person Mr.Sawale Sanjay Vilas	Petitioner
versus	
Shankar Hiralal Salunkhe and others	Respondents

WITH
WRIT PETITION NO.4788 OF 2015

The Nashik Merchant's Co-operative Bank Ltd. (Multistate Scheduled), through its authorised person Mr.Sawale Sanjay Vilas	Petitioner
versus	
Shaikh Wasim Gani and others	

WITH
WRIT PETITION NO.4792 OF 2015

The Nashik Merchant's Co-operative Bank Ltd. (Multistate Scheduled), through its authorised person Mr.Sawale Sanjay Vilas	Petitioner
versus	
Shaikh Gani Suleman Shaikh and others	Respondents

WITH
WRIT PETITION NO.4798 OF 2015

The Nashik Merchant's Co-operative Bank Ltd. (Multistate Scheduled), through its authorised person Mr.Sawale Sanjay Vilas	Petitioner
versus	
Sunil Subhash Pawar and others	Respondents

WITH
WRIT PETITION NO.4793 OF 2015
WITH

WRIT PETITION NO.4794 OF 2015
WITH
WRIT PETITION NO.4795 OF 2015
WITH
WRIT PETITION NO.4796 OF 2015
WITH
WRIT PETITION NO.4797 OF 2015

The Nashik Merchant's Co-operative Bank Ltd.

(Multistate Scheduled), through its

authorised person Mr.Sawale Sanjay Vilas

Petitioner

versus

Prakash Tulshiram Avhad and others

Respondents

Mr.Girish Agrawal for Petitioner.

Mrs.PPShinde, AGP, for State in all petitions.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th August 2017

PC :

1. Since common question is involved in all these petitions, the same are disposed of by common order. The petitioner is the complainant in all the complaints which are subject matter of the aforesaid petitions. The complaints were filed before the Court of Judicial Magistrate, First Class, Nashik against the respondent nos.1 to 4 for offences punishable u/s.420, 467, 471 r/w Section 34 of Indian Penal Code.

2. For the sake of convenience, the facts stated in complaint which is subject matter of Criminal Writ Petition No.4793 of 2015, are referred to herein, which are as follows :

(a) On 2nd June 2000, the respondent no.1 submitted quotation for vehicle loan issued by respondent no.4 for obtaining vehicle loan. The respondent no.1 made application for vehicle loan

along with other relevant documents and respondent nos.2 and 3 stood guarantors for the said loan on 6th January 2001;

(b) In 2001, the petitioner bank released/sanctioned/granted vehicle loan in the name of respondent no.4 and accordingly instructed respondent no.4 to make endorsement of the loan amount in the RTO papers of the charge created by obtaining loan from the petitioner. The amount of vehicle loan was released in the name of respondent no.4 by handing over the demand draft to the respondent no.1;

(c) The respondent no.1 handed over the demand draft to respondent no.4 who was required to encash the said demand draft and release the vehicle in the name of respondent no.1 with remark of the bank loan in the RTO book. However, the respondent nos.1 to 4 in connivance encashed the demand draft which was in the name of respondent no.4, but no vehicle was released in the name of respondent no.1;

(d) When the petitioner bank realized the fraud played by the accused, the bank issued notice dated 9th March 2001 through their advocate to respondent no.4. The respondent no.4 replied to the said notice issued by the bank denying any role or complexity in the said fraudulent transaction;

(e) The petitioner approached Kopergaon Police Station and filed a complaint for offences u/s 418, 420, 467, 471 read with Section 34 of IPC for necessary action on 29th November 2001. However, due to inaction of the Kopergaon Police Station in initiating

any criminal proceedings against the accused, the petitioner filed complaint dated 26th April 2002 to the Superintendent of Police for action in the complaint instituted by the petitioner. The petitioner was, however, informed by the police on 26th November 2002 to pursue the remedy privately in the Court of law. In pursuant to that, the aforesaid complaint was filed on 11th March 2003.

3. In pursuant to filing of the aforesaid complaint, the verification statement of the complainant was recorded by the Trial Court on 1st July 2003 and the Court was pleased to issue process against Respondent nos.1 to 4 for the offences u/s.420, 467, 471 r/w 34 of Indian Penal Code vide order dated 30th August 2003.

4. The petitioner preferred an application on 16th July 2005 vide Exhibit-18 before the Court of learned JMFC in the complaint filed by the petitioner to add the accused no.4a to 4c as they were the directors of respondent no.4 and were active in the complexity of the fraud. The said accused are impleaded as respondent no.4a to 4c in the present petition. The respondent no.4 opposed the said application by filing say before the Trial Court. The learned JMFC was pleased to allow the said application vide order dated 24th July 2006.

5. The Trial Court recorded the additional verification of the complainant and the process was issued against the added accused i.e. respondent nos.4a to 4c on 23rd February 2007.

6. The respondent no.4a to 4c preferred Criminal Revision application before the Court of Sessions challenging the orders

passed by the learned Judicial Magistrate, First Class. The learned Sessions Judge was pleased to allow the said application and by order dated 3rd July 2015 set aside the order passed by learned JMFC on 23rd February 2007 issuing process against the respondent no.4a to 4c and dismissed the complaint against the said accused.

7. Being aggrieved by order dated 3rd July 2015 passed by the District Judge and Additional Sessions Judge, Nashik, the petitioner has invoked the writ jurisdiction of this Court under Article 227 of the Constitution of India as well as the inherent powers u/s 482 of the Code of Criminal Procedure challenging the aforesaid order passed by the Sessions Court referred to hereinabove.

8. The learned counsel for the petitioner submitted that the Sessions Court ought not to have set aside the order passed by the learned Magistrate. The petitioner's case is that additional verification was recorded by the Trial Court on 23rd February 2007 wherein the petitioner-complainant had stated that the directors of respondent no.4 are directly responsible for the commission of offence. The learned Sessions Judge failed to appreciate that the company, though stand as company registered under the Companies Act, was in fact a family concern of respondent nos.4a to 4c. It is further contended by the complainant that the learned Sessions Judge had failed to consider several decisions of the Court while setting aside the order passed by the Trial Court. It was contended by the complainant that specific contentions are made in the complaint as against the directors that they had approached the complainant for making request of supply of the vehicles and the complainant had approached the accused subsequently requesting

them to make the payment. It is further contended by the complainant that from the complaint it can be clearly deduced that respondent nos.4a to 4c were in-charge and responsible for the affairs of the company. It is case of complainant that the accused no.4 is not juristic person and cannot be prosecuted in its name. The directors can be prosecuted and hence the application for amendment was preferred by complainant. The application was primarily for correction in description of accused no.4. The impugned order is contrary to the well established principles of law. The learned counsel for the petitioner placed reliance upon the following decisions :

- (i) **S.R.Sukumar Vs. S.Sunaad Raghuram**
2015-SC-SAR (Criminal)-908
- (ii) **Mainuddin Abdul Sattar Shaikh Vs. Vijay Salvi**
2015-SC-SAR(Criminal)-904
- (iii) **Maan Agro Centre Vs. Eid Parry (India) Ltd. & another**
2005(2)-Mh.L.J.-44
- (iv) **Ramanee Narayanan Vs. C.K.Mukundan & another**
2017(2)-CCC-302 (Ker.)

9. I have perused the documents on record and the orders passed by the Courts below. The criminal complaints were filed by the petitioner before the Trial Court. The verification statement of the complainant was recorded by the said Court immediately thereafter and the process was issued against the Respondent nos.1 to respondent no.4 for the offences stated hereinabove. On 16th July 2005, the petitioner preferred an application before the Trial Court stating that it was an application for correction in the description of accused no.4. In the said application, it was stated that at the time

of filing of complaint, the complainant has made accused no.4 as M/s.Shirode Automobiles Pvt.Ltd. After service of summons to accused no.4, one Bhanudas Thorat in capacity of manager of M/s.Shirode Automobiles Pvt.Ltd. has appeared in the said case. It is further stated that after filing the said complaint, the complainant came to know that there are three directors of accused no.4 namely Mr.Ganesh Nimba Shirode, Mr.Sandip Nimba Shirode and Smt.Rupali Ganesh Shirode. The complainant was not having direct relationship with accused no.4 regarding the captioned loan transaction. Hence, the complainant was not aware about the said fact. It has become necessary to insert the names of the directors of accused no.4 in the complaint to avoid technical complications. It was further stated that the accused no.4 is not juristic person and cannot be prosecuted in its name. The directors of accused no.4 can be prosecuted. Hence, the complainant is moving the said amendment application. This application is not moved to cure the defect in the complaint. The proposed amendment is not going to change the nature of the complaint nor going to affect the rights of the accused persons. The petitioner, therefore, prayed that the petitioner may be permitted to insert the names of the respondent nos.4a to 4c in the complaint. In the reply filed by the respondent no.4, it was contended before the Trial Court that there is no provision in the Cr.PC by which a complainant can make a prayer to the Court for permitting him to amend the complaint. Hence, the application is not tenable in law. It was further contended that the contention of the complainant of adding the names of the directors is totally false as the day to day working of the accused no.4 firm is looked after by Mr.Bhanudas Thorat being manager of accused no.4 firm and in that capacity he had appeared in the said complaint on behalf of accused no.4. The

application of the complainant is, therefore, not tenable in law and deserves to be dismissed.

10. The Trial Court while entertaining the aforesaid application vide order dated 24th July 2006 observed that the complainant has filed the said complaint against the accused nos.1 to 4. The process was issued against the accused for various offences. The title clause of the complaint shows the description of accused no.4 as M/s.Shriode Automobiles Pvt.Ltd. The record shows that Mr.Bhanudas Thorat has appeared in the capacity as manager of accused no.4. Now, the complainant wants to describe and add the directors of accused no.4. The complainant had mentioned three names of directors of accused no.4 in the said application. The application was contested by the accused no.4. It was contended at the instance of the said accused that there is no provision in Cr.PC to amend the complaint nor the prayer can be made to the Court for the same. It was also contended that Bhanudas Thorat has appeared on behalf of accused no.4 in capacity of manager and he is looking after day to day business of accused no.4 and hence it was prayed that the application be rejected. The Trial Court further observed that the complainant had placed reliance upon the decision of this Court in the case of **Maan Agro Centre Vs/ Eid Party (India) Limited and another** (supra). The Court further observed that there is no provision in Cr.PC to amend the complaint or more particularly to substitute the names of accused. In the present case, there is no question of substitution of the person mentioned as directors of accused no.4. The complainant has arrayed no.4 M/s.Shriode Automobiles Pvt.Ltd. Now he wants to describe the names of its directors only. Giving the description of the directors of accused no.4

which has been already arrayed, cannot be said to be substitution. Though as alleged by accused no.4, Mr.Bhanudas Thorat in capacity of manager of accused no.4 is looking after the day to day work, he cannot be held responsible for any acts done by the directors. It was further observed that the ratio laid down in the case of Maan Agro Centre, since applicable to the said case. Considering the discussion and the ratio laid down in the said case, it is necessary to allow the said application and to give opportunity to complainant to describe the names of directors of accused no.4 in the title of the complaint. Hence, the application was allowed by order dated 24th July 2006. In pursuant to the aforesaid order, the Trial Court recorded the additional verification statement of the complainant. In the said verification, it was stated that after the complaint was filed, the complainant came to know about the directors of accused no.4. The names of the said directors were known to the complainant at the subsequent stage after filing of the complaint. It was also stated that all the accused are responsible for commission of misappropriation being the directors of the accused no.4. In pursuant to that, the process was issued against the added accused nos.4a to 4c. The orders passed in all the complaints which are subject matter of the aforesaid petitions, are identical and added accused nos.4a to 4c are also common.

11. The learned Sessions Judge while passing the impugned order has observed that in the present case, the accused no.4 M/s.Shirode Automobiles Pvt.Ltd. is represented on record through its manager Mr.Bhanudas Thorat and as a manager of accused no.4, he appeared in the capacity on behalf of accused no.4. The day to day working of accused no.4 is looked after by the manager. It was further observed

that apart from above factual aspect, one has to also see whether there was material on record to proceed against the directors. On perusal of the complaint it is apparent that nowhere in the complaint the complainant had described or alleged any role being played by the directors in the said transaction. Same is the case with the verification and additional verification. In additional verification, the name of accused nos.4a to 4c as directors of the company was stated. Some documents were also placed in support of complaint like notice dated 9th March 2001 by the complainant to accused no.4 and which is addressed to its manager. There is no reflection regarding the role of directors. It is further observed that in the police complaint dated 29th November 2001 submitted by the complainant to the Kopergaon Police Station also, there is no mention about any specific role played by the directors. On perusal of the entire material on record, it no way satisfies prima facie case against accused nos.4a to 4c. The learned Judge further observed that by virtue of Section 319 of Cr.PC power is vested in the Court to proceed against other persons appearing to be guilty of offence. The order passed by the Trial Court was also not in consonance with the said provision. There was no prima facie material to proceed against accused nos.4a to 4c. The Sessions Court, therefore, set aside the order passed by the learned Magistrate.

12. Although the application was for inserting the names of aforesaid accused/respondents, under the garb of description of respondent no.4, the Trial Court recorded additional verification statement and issued the process against the added accused. Once the Trial Court had taken cognizance of the complaint by issuing process against accused nos.1 to 4, there was no question of

recording additional verification statement and issuing a process against the added accused. The purport of the application as represented by the petitioner was to correct the description of accused no.4. However, by following the procedure which is stated hereinabove, the accused nos.4a to 4c were added as accused and once again the cognizance was taken by the Trial Court and the process was issued against them. The procedure adopted by the Trial Court is contrary to the provisions of law. The only mode which was available to add the accused is to resort to the provisions of Section 319 of Code of Criminal Procedure, 1973 at appropriate stage. Under the pretext of describing the accused no.4 and on the ground that accused no.4 is not juristic person, the respondent nos.4a to 4c could not have been impleaded as accused. By relying on the decision in the case of Maan Agro Centre (supra), the Trial Court has misread the provisions relating to vicarious liability contemplated under Section 141 of Negotiable Instruments Act and equated the same with prosecution under Indian Penal Code. It is also pertinent to note that after the cognizance was taken by the Trial Court, there was no occasion for the Court to allow amendment to the application of such nature. In any case, there was no material to issue the process by following the procedure stated above, against respondent nos.4a to 4c as accused being directors of accused no.4 in the absence of any evidence or averments in that regard in the complaint. The accused no.4 was represented by manager Mr.Bhanudas Thorat who had appeared before the Trial Court. In these circumstances, there is no reason to interfere with the order passed by Sessions Court.

13. In the decision of Hon'ble Supreme Court of India in the case of Mainuddin Abdul Sattar Shaikh, the Supreme Court has

considered the question whether the respondent-accused can be made liable in his personal capacity when the company was not made party to the complaint. The Supreme Court was pleased to observe that the accused was the managing director of the company and that person who draws the cheque on an account maintained by him for paying the payee alone attracts penalty. It was further observed that on bare reading of Section 138 of Negotiable Instruments Act the essential requirement attracting the liability under the said provision is that the person who is to be made liable, should be the drawer of the cheque and should have drawn the cheque on an account maintained by him with the bank for payment of any amount of money; but another person, from out of that amount for discharge in full or part of any debt or other liability, cannot be held accountable for the penal action. The person who draws the cheques on the account maintained by him for paying the payee attracts the liability. In paragraph 12 of the said decision, the Supreme Court has considered the arguments advanced by the respondent therein that in the complaint it was not stated that the accused was the person in-charge and responsible for affairs of the company. However, as the respondent therein was the managing director and sole proprietor of the accused, there was no need to specifically aver the said fact in the complaint. The observations therein are not applicable in the present proceedings. The Court was dealing with the vicarious liability contemplated under Section 141 of Negotiable Instruments Act and the liability of a person who draws the cheque.

14. Another decision of Supreme Court in the case of S.R.Sukumar was placed for consideration by the advocate for petitioner. The

Supreme Court has considered the issue relating to the amendment of the complaint. In the said case the complaint was filed and the statement of complainant was recorded on two occasions. On the next date, the complainant moved an application seeking amendment to the complaint by praying for insertion of certain paragraphs in the complaint stating the fact of poem written by the accused in connivance with other accused depicting the complainant as villain with an intention to malign the character, status and image of the respondent. The said application was allowed by the Trial Court by permitting the amendment and thereafter the Trial Court took the cognizance of the offence and directed issuance of process. The said order was challenged by accused before the High Court wherein it was contended that there is no provision for amendment of the complaint. The High Court dismissed the petition on the premise that the amendment was made prior to taking cognizance of the offence. It was also observed that if amendment is not allowed, the multiple proceedings would have ensued between the parties. It was argued before the Supreme Court that there is no provision for amendment under Cr.PC and in the absence of any specific provision under the Cr.PC, the Court below had committed an error in allowing the amendment in criminal complaint. It was also canvassed that the Trial Court had taken cognizance of the complaint on two occasions which is impermissible under law and once the cognizance was taken, the Magistrate ought not to have allowed the amendment to the complaint. The Supreme Court observed that the fact that the Trial Court had recorded the statement of the complainant on two occasions, does not amount to taking cognizance of the complaint and cognizance was taken when the Magistrate is satisfied of a prima facie case to take cognizance of the complaint. It was observed that

the Magistrate is not bound to take cognizance of an offence merely because the complaint has been filed before him when in fact the complaint does not disclose the cause of action. The object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Taking cognizance of an offence means the Magistrate must have judicially applied his mind to the contents of the complaint and indicated that the Magistrate takes judicial note of an offence. After the complaint is filed before the Court, the Magistrate has various courses available to deal with the complaint. It was, therefore, observed that recording of statement does not amount to taking cognizance and that the amendment application was preferred before taking cognizance of the complaint. In paragraphs 17 and 18 of the said decision, it was observed as follows :-

*“17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In **U.P. Pollution Control Board Vs. Modi Distillery and Others (1987)3-SCC-684**, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows :-*

‘..... The learned Single Judge has focused his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief

Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the marking of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Distillery Furthermore, the legal infirmity is of such a nature which could be easily cured.....”

18. what is discernible from the U.P.Pollution Control Board's case is that 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 now allow such amendment in the complaint.”

15. In concluding paragraph of the said decision it was observed that in the said case the amendment application was filed to carry out the amendment by adding certain paragraphs. Though the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment on the ground that no cognizance was taken of the complaint before the disposal of amendment application. The Magistrate was yet to apply his judicial mind to the contents of the complaint and had not taken cognizance of the complaint. The summons was yet to be ordered to be issued to the accused and no prejudice would be caused to the

accused. The amendment did not change the original nature of the complaint being one for defamation and publication of said poem being in the nature of subsequent event created a new cause of action in favour of respondent, which could have been prosecuted by respondent by filing a separate complaint and therefore, to avoid multiplicity of proceedings, the Trial Court allowed the amendment application. The Court, therefore, observed that considering these factors, the High Court had rightly declined to interfere in the order of Magistrate allowing the amendment application. In the light of the aforesaid observations it is clear that the Trial Court had committed an error in allowing the amendment to add respondent nos.4a to 4c. The application was filed after cognizance of the complaint was taken by the Court and secondly the manner in which the complaint was dealt with by recording additional verification and process was issued, clearly depicts that the Court has not followed the due process of law. It was not easily curable legal infirmity which can be cured by means of filing a formal application for amendment. The respondent nos.4a to 4c were added as accused to the complaint under the pretext of description of accused no.4 which definitely causes prejudice to the said accused.

16. In the case of Maan Agro Centre, this Court has dealt with the issue relating to insertion of name of proprietor in the cause title of the complaint. In the said case the process was issued against the petitioner therein and he appeared before the Trial Court. The complainant preferred an application for permission to correct the description of the accused. The complainant described the accused as Maan Agro Centre through its proprietor. By the said application, the complainant wanted to insert the name of proprietor viz.

Aminulla Khan. The said petitioner thereafter moved an application for dismissing the complaint on the ground that the accused described in the complaint which is a proprietary concern, is not a juristic person and no complaint can be filed against non legal person. The Trial Court dismissed the application preferred by the complainant for correction in the description and allowed the application of the said petitioner dismissing the complaint. The complainant moved the Sessions Court by preferring revision application and the said Court allowed the revision application and set aside both the orders. The Sessions Court allowed the application of complainant for correction in the description of the accused in the complaint and rejected the application of said petitioner/accused for dismissal of complaint. The revisional Court directed the Trial Court to proceed to decide the complaint in accordance with law. The said order was challenged before this Court. It was contended that the amendment of complaint by way of correction in the name is not permissible. It was also submitted that even if the alleged amendment is allowed, that would not cure the defect in the complaint because the accused in that case would be Mann Agro Centre through its proprietor Mr.Aminullah Khan and not Aminullah Khan in his capacity as the proprietor of the Maan Agro Centre. The complaint is, therefore, liable to be dismissed. The petitioner therein placed reliance on the decisions in the cases of :

- (a) Behram S. Doctor Vs. State of Maharashtra
2003(4)-Mh.L.J.-505;
- (b) Anas Industries Vs. Suresh Bafna
2000-All.M.R. (Cri) Journal-13;
- (c) Sri Sivasakthi Industries Vs. Arihant Metal Corpn.
1992-Company Cases-Vol.74-749

It is in this context the Court was pleased to observe that Maan Agro Centre through its proprietor was described as an accused and initially the name of proprietor viz. Aminulla Khan was not mentioned in the complaint. However, it was certain that Maan Agro Centre is the sole proprietary concern and Aminulla Khan is the only proprietor thereof. In this view of the matter, whether the accused was described as Maan Agro Centre through its proprietor Aminulla Khan or whether he is described as Aminulla Khan, proprietor of Maan Agro Centre, makes no difference. It would not cause any prejudice to the petitioner-accused. The Sessions Court is justified in permitting the complainant to insert the name of Aminullah Khan as the proprietor thereof. The Court relied on decision relied upon by the advocate for complainant in the case of N.Vaidyanathan/Deepika Milk Marketing Vs. Dodla Dairy Limited 2000-ALL.M.R. (Cri) Journal-Page 9 and in the case of Bhimsingh Vs. Kansingh 2004(2)-D.C.R.-158 (Rajasthan). The High Court, therefore, confirmed the order passed by Sessions Court in the revision application. The observations of this Court in the aforesaid decision are not applicable in the present case. In fact, these observations are in consonance with the observations made by Supreme Court in the case of S.R.Sukumar which is referred to hereinabove. At the most, it was a curable infirmity and, therefore, the amendment was permissible.

17. In the decision in the case of Ramanee Narayanan referred to by the advocate for Petitioner, Kerala High Court has considered similar issue. The question which was considered by the said Court is whether the partnership firm of which the accused before the Court was managing partner, is also required to be arraigned as an accused to maintain a complaint before the Court in respect to the

complaint which is filed under Section 138 of the Negotiable Instruments Act. It was observed that the accused was managing partner of the firm. The other person who issued other cheque was the partner who was present along with the accused. The cheque was not the one issued from the account of the partnership firm and the same was issued from the individual account maintained by the accused with his bankers. It cannot be said that the person cannot undertake liability of another person and to discharge the same for and on behalf of such another person. It cannot be said that when such cheque is dishonoured, an offence under Section 138 of Negotiable Instruments Act cannot be attracted. It cannot not be said that in order to maintain a complaint alleging such an offence under section 138 of Negotiable Instruments Act, in such a case the person who had shouldered the responsibility and stepped in with an undertaking to clear the liability of other person, cannot be prosecuted for the offence without arraigned other person also as an accused. The observations were made in the context of the factual aspects of the complaint. In any case, the said observations are not applicable in the present case. It is pertinent to note that the complaint was originally filed against accused nos.1 to 4 and the process was issued. The accused no.4 was represented by the manager who appeared in the Court and thereafter the applicant was moved for amendment to insert the description of accused no.4. However, after the amendment application was allowed, the additional verification statement was recorded and cognizance was taken against accused nos.4a to 4c. Present case is, therefore, completely distinct from the one which was considered by Kerala High Court. The Trial Court has completely ignored the provisions of law and had adopted the procedure which was contrary to law. It is

pertinent to note that the application for amendment was preferred for correction in the description of accused no.4 and the Court allowed the same to describe the names of directors of accused no.4 in the title of the complaint. This had amounted to impleading accused nos.4a to 4c in the complaint. Surprisingly the Court also proceeded to record additional verification and issued process. The subsequent events were also contrary to the scope of the application preferred by complainant. The amendment in the nature of the present complaints ought not to have been allowed after cognizance of the complaint was taken by the Court.

18. In the light of the factual matrix of the present case and on the basis of observations made by the Courts in the decisions referred to hereinabove, I am of opinion that the Trial Court has committed a grave error in allowing the said application for amendment and thereafter proceedings to issue process. The order passed by the Sessions Court setting aside the order of Trial Court requires no interference. The petitions are, therefore, liable to be rejected.

19. Hence, I pass following order :

ORDER

All petitions, being Writ Petition Nos.4783/2015, 4784/2015, 4785/2015, 4786/2015, 4787/2015, 4788/2015, 4789/2015, 4790/2015, 4791/2015, 4792/2015, 4793/2015, 4794/2015, 4795/2015, 4796/2015, 4797/2015, 4798/2015, 4799/2015, 4800/2015, 4801/2015, 4802/2015 and 4803/2015 are hereby rejected and stand dismissed. No order as to costs.

(PRAKASH D. NAIK, J.)