

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1115 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC') is filed by the petitioners/ A1 & A2 assailing the order, dated 10.03.2017, of the learned Additional Junior Civil Judge-cum-Additional Judicial Magistrate of First Class, Chirala, passed in CrI.MP.No.322 of 2017 in C.C.No.483 of 2014 filed by the 2nd respondent-complainant requesting for permission to amend the cause title in the complaint and also the averments in the affidavit filed in lieu of examination-in-chief of PW1 insofar as the description of the name of the concern of the 1st accused as 'Divighnu Versions' instead of 'The Vighnu Versions' wherever such mention was made in the complaint and the said affidavit.

2. I have heard the submissions of the learned counsel for the petitioners-accused (hereinafter 'the accused') and that of the learned counsel for the 2nd respondent-complainant (hereinafter 'the complainant'). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

3.1 The complainant filed the complaint case against the accused requesting to punish them for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The accused are resisting the said case. While so, after the complainant filed his affidavit in lieu of examination-in-chief and when the matter is coming for cross examination, the complainant filed the afore-stated Miscellaneous Petition before the trial Court requesting for permission to amend the complaint as well as the affidavit filed in lieu of examination-in-chief as mentioned in the introductory paragraph of this order.

3.2 The case of the petitioner in support of the said request is that before the cross-examination of the complainant has commenced, it is noticed that

the name of the concern of the 1st accused was mentioned as 'The Vighnu Versions' instead of 'Divighnu Versions' though the correct name is 'Divighnu Versions' as per the rental/lease agreement. The further submission of the petitioner is that though there is no provision in the Code for seeking amendment of the complaint or petition, permission for amendment to correct curable infirmities can be granted, as per settled legal position.

3.3 Per contra, the case of the accused is this: - 'The complaint case is of the year 2014. Even the affidavit in lieu of examination-in-chief is also filed with the same name as mentioned in the complaint. The counsel for the accused pointed out the incorrect description of the name of the concern of the 1st accused and raised an objection. Then only the present petition for amendment is filed by the complainant. The alleged rental/lease agreement, or the copies of it, if any, are not filed before the Court. The trial Court also raised certain objections for marking documents which are filed before it. Then only the documents are filed by the complainant. There are two suits in between the parties on the file of the Senior Civil Judge's Court, Chirala. In those suits also the petition for amendment was filed in the year 2016. Therefore, the complainant is grossly negligent and is not interested in the case. He is wasting the valuable time of the Court. Hence the petition may be dismissed.'

3.4 On merits and by the orders impugned in this revision, the trial Court allowed the petition of the complainant and permitted to make amendments as sought for in the petition.

3.5 Aggrieved thereof, the accused filed this revision case.

4. Learned counsel for the accused while reiterating the case of the accused, which is already stated supra, would submit as follows: - 'The amendment if permitted would go to the root of the matter. In a criminal case

at a belated stage if amendment of the complaint is permitted, it causes great prejudice to the accused. The trial Court erroneously applied the ratio in the decision in S.R. Sukumar v. Sunaad Raghu Ram¹ though the same is not applicable to the facts of the case. As the rights that accrued to the accused were nullified by the order impugned in this revision the accused suffered serious loss. Hence the order impugned may be set aside.'

5. Per contra, learned counsel for the complainant while supporting the orders of the trial Court stated that the description of the concern of the 1st accused in the original complaint and in the affidavit filed in lieu of examination-in-chief of PW1 is only a mistake, which occurred due to oversight and, therefore, it is a curable infirmity and hence, the trial Court having followed the ratio in the decision of the Supreme Court rightly allowed the petition; and, hence, there is no merit in the revision and the revision case is liable to be dismissed.

6. I have given detailed and thoughtful consideration to the facts and submissions. I have perused the material record. Even in the statutory notice which was issued prior to the institution of the criminal complaint, the name of the concern was correctly mentioned as 'Divighnu Versions' is not in dispute. In the complaint while mentioning the name of the 1st accused, he was described as the proprietor of 'The Vighnu Versions' instead of describing the concern as 'Divighnu Versions'. It is apparent from the facts and the contentions that it is an inadvertent mistake and is a curable infirmity. In the decision in S.R. Sukumar (supra), which is also referred to in the order of the trial Court, the Supreme Court held as follows:

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 Ors., (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint that is, instead of

¹ 2015(2) ALD (CrI) 798(SC)

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 focussed his attention only on the [pic]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 making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery... Furthermore, the legal infirmity is of such a nature which could be easily cured...”

Since in the instant case, as the facts, submissions and the material record make it manifest that the mistake is a curable infirmity and can be permitted to be corrected, this Court finds that there is no merit in the contentions of the accused and that the revision is liable for dismissal, however subject to certain directions.

7. In the result, the Criminal Revision case is dismissed confirming the order of the trial Court insofar as permitting the amendment of the complaint with regard to description of the concern of the 1st accused as ‘Divighnu Versions’ in stead of ‘The Vighnu Versions’ wherever it occurs in the complaint. However, since the affidavit in lieu of examination-in-chief is a sworn statement and cannot be permitted to be amended, the complainant is given liberty to file a fresh affidavit with correct description of the concern of the 1st accused.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

29.06.2017
Vjl