

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 644 OF 2018

Shabbir Nabilal Nadaf

.....Petitioner

V/s.

Mahammad Kalim Maulana Shaikh and anotherRespondents

Mr. Priyal G. Sarda for the petitioner.

Mr. Y. Y. Dabke APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 16, 2018.

P.C.

In prosecution initiated for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, applicant moved an application Exhibit 72 for amendment of the complaint when the complaint was being finally heard. Application Exhibit 72 for amendment came to be rejected by the order impugned dated 29/12/2017 passed by the learned Judicial Magistrate First Class, Solapur. As such, this petition.

2 Relying upon the Judgment of the Apex Court in the matter of **S. R. SUKUMAR V/s. S. Sunaad Raghuram [(2015) 9 Supreme Court Cases 609]** particularly paragraph 18 & 19. The learned counsel for the applicant/complainant would urge that if the amendment as prayed is allowed, no prejudice will be caused to the accused persons. The learned counsel then would submit that the amendment which is sought to be incorporated, no way, changes the nature of the claim put forth in the complaint. According to him, the portion sought to be added by virtue of amendment has not surprised the respondent/accused and as such, amendment needs to be allowed. He would rely upon the content of complaint, evidence of parties so as to substantiate the grant of amendment.

3 At the outset, it is required to be noted that the fact that the cheque was not issued in the name of individual but in the name of propriety concern was within the knowledge of the petitioner when the evidence in the matter was recorded. The petitioner permitted to continue recording of evidence and at the fag end of the trial, when the complaint is finally argued has sought amendment.

4 The Trial Court, having regard to the stage at which the application for amendment is moved, was conscious of the fact that the Court has already taken cognizance of the complaint.

5 Apart from above, the fact remains that the respondent/accused have objected the prayer for amendment on the ground that the same causes substantial change in the complaint and will prejudice the right of the defence.

6 So far as the law laid down in the matter of **S. Sukumar** [*Cited supra*] is concerned, the Apex Court in the said matter, in paragraph 20 has dealt with a situation wherein the order of the Magistrate granting amendment was assailed. It is at pre-cognizance stage i.e. before the Magistrate could order issuance of process, prayer for amendment was allowed and the High Court declined to interfere with such order of Magistrate having regard to the stage at which it was allowed.

7 In the facts of the present case, when the trial has already reached at the stage of final hearing, in my opinion, having regard to the prejudice demonstrated by the accused, the trial Court rightly rejected the amendment. No interference is warranted in extra ordinary jurisdiction. Petition fails, dismissed.

[NITIN W. SAMBRE, J.]