

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.1476 of 2012

ORDER:

Aggrieved by the order dated 13.08.2012 in CrI.M.P.No.1986 of 2012 in C.C.No.143 of 2010 passed by the learned XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Hyderabad, allowing the petition filed by the complainant seeking permission to amend the cause title of the complainant and incorporate the name of Trinity Infraventures Limited in the place of Goldstone Exports Limited, the accused filed the instant CrI.R.C.

2) The complainant filed C.C.No.143/2010 (old C.C.No.397/2007) against accused under Section 138 of Negotiable Instruments Act (for short "N.I Act") on the allegation that the complainant gave hand loan of Rs.13,00,000/- to accused towards discharge of which, the accused issued a cheque bearing No.470221 dated 08.01.2007 drawn on Development Credit Bank (DCB), Hyderabad Branch, at Hyderabad, which on presentation was bounced back with the endorsement "*insufficient funds*". The accused contested the matter.

a) While-so, the complainant filed CrI.M.P.No.1986/2012 seeking permission of the Trial Court to amend the cause title of the complainant to incorporate the name of Trinity Infraventures Limited in the place of Goldstone Exports Limited on the ground that in the year 2009 name of the company was changed from Goldstone Exports Limited to Trinity

Infraventures Limited w.e.f. 30.09.2009 and hence the amendment was essential. The respondent opposed the said petition. The Trial Court having observed, change in the name of the complainant's company was approved by the Central Government under Section 21 of the Companies Act, 1956 and accordingly, a certificate was issued under Section 23(1) of the Companies Act and the proposed amendment will not cause any prejudice to the accused, allowed the petition. Consequently, the Trial Court also allowed CrI.M.P.Nos.1984 and 1985/2012 filed by the complainant seeking to recall PW.1 for the purpose of marking the document i.e, certified copy of certificate of registration issued, changing the name of the complainant company from Goldstone Exports Limited to Trinity Infraventures Limited w.e.f 30.09.2009 and to receive the said document.

3) Heard arguments of Sri Kowturu Vinay Kumar, learned counsel for petitioner and Sri Peri Prabhakar, learned counsel for 1st respondent.

4 a) The main plank of argument of learned counsel for petitioner is that the C.C was filed projecting Goldstone Exports Limited represented by its Director Mr. P.V.S. Sarma, as complainant and in the middle of the trial the name is sought to be amended as Trinity Infraventures Limited and if the amendment were to be allowed, the complaint will not be maintainable.

b) Secondly, he argued that during the cross-examination PW.1 categorically admitted that the complainant company namely Goldstone

Exports Limited is very much in existence. Therefore, the petition to seek amendment of the name of the complainant is contrary to the admission made by PW.1.

c) Thirdly, he would argue that PW.1 was authorised by the previous company to launch the prosecution and if the name of the complainant is changed, the complaint filed by him will become otiose.

d) Finally, he argued that the amount of Rs.5,00,000/- paid by the accused was received and a receipt under Ex.D.1 was issued and the amount was deposited in the account of Goldstone Exports Limited and therefore, the present petition to amend the name of the complainant company is not tenable as the amendment will cause any amount of prejudice to the petitioner/accused.

He thus prayed to allow the CrI.R.C and dismiss the CrI.M.P.No.1986/2012.

5) Per contra, learned counsel for 1st respondent would argue that the amendment will not cause any prejudice to the accused inasmuch as the name of the company alone was changed but the same old company is still in existence which fact was revealed by the PW.1 in his evidence. The amount of Rs.5,00,000/- paid under Ex.D.1 is an admitted fact and therefore, the issuance of the receipt by the M/s. Goldstone Exports Limited will not have any adverse impact on the defence of the accused. Unravelling the petitioner's argument that permission was issued to PW.1 through Board Resolution to file complaint only on behalf of the

previous company, learned counsel argued that since the same company is continuing and only its name is changed, there is no need of any fresh resolution. He thus finally submitted that when the amendment has not caused any prejudice to the accused, the same can be allowed. He relied upon the decision reported in *S.R. Sukumar v. S.Sunaad Raghuram*¹.

6) The point for determination is:

“Whether there are merits in the Crl.R.C to allow?”

7) **POINT**: Admittedly the complaint was filed in the name of M/s.Goldstone Exports Limited represented by its Director Mr.P.V.S. Sarma. The copy of certificate dated 30.01.2009 issued by the Registrar of Companies shows that a fresh certificate of incorporation was issued consequent upon the change of name from M/s. Goldstone Exports Limited to Trinity Infraventures Limited. As rightly pointed out by the learned counsel for 1st respondent, the contents in the certificate would show that a fresh certificate of incorporation was issued consequent upon the change in the name of the company. The said certificate was issued pursuant to Section 23(1) of the Companies Act, 1956. Thus the constitution and functioning of the company remained as it was while its name alone was changed. In that view, merely because the complaint was filed by the complainant’s authorised person (PW.1) with its old name as M/s.Goldstone Exports Limited, subsequent change in the name will not debar the company from prosecuting its complaint and no

¹ (2015) 9 Supreme Court Cases 609

provision of law creating such embargo is placed before this Court by the petitioner. So far as payment of Rs.5,00,000/- under Ex.D.1 is concerned, the same is an admitted fact and hence the petitioner cannot harp any prejudice being caused to him. Since the same company was continuing with its changed name, the authorisation earlier given by the Board of Directors of Goldstone Exports Limited will hold good even after the name of the company is changed. So in any view of the matter, the petitioner cannot clamour about the prejudice. Hence the Trial Court was right in allowing the petitions filed by the complainant.

In **S.R. Sukumar**'s case (1 supra), it was observed thus:

***“Para 19:** What is discernible from U.P. Pollution Control Board case [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] 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.”*

In the instant case, as rightly observed, no prejudice was caused to the petitioner/accused by allowing the petitions filed by the complainant.

8) In the result, this Criminal Revision Case is dismissed.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 12.12.2018
SCS

