

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 1001 of 2016

Date of Decision: February 23, 2018

Rakesh Bansal

.....Petitioner

versus

Narinder Kumar Sharma

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. S.S. Kamboj, Advocate
for the petitioner

Mr. Gursimranjit Singh, Advocate
for the respondent

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Sudhir Mittal, J.

The petitioner is the complainant in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. A cheque was issued by the accused-respondent in discharge of his legal liability which was dishonoured and, therefore, the complaint was filed. During the pendency of the complaint, at the time of examination of the accused under Section 313 Cr.P.C., it came to the notice of the petitioner that the cheque number had been wrongly mentioned in the complaint. Actually, the cheque number was '173543' whereas in the complaint the number mentioned was '173540'. Thus, an application for amendment of the complaint was filed which has been rejected vide the impugned order.

At the very outset, it may be noticed that the impugned order had been passed by the Judicial Magistrate Ist Class. The said order could have been challenged by way of revision petition, if maintainable, before the District Judge.

However, a revision had been filed directly before the High Court and in my view

the same is not maintainable. Faced with this situation, learned counsel for the

petitioner made an oral request that the petition may be treated as one filed under Section 482 Cr.P.C. This request is accepted and the petition is being decided by treating it as a petition filed under Section 482 Cr.P.C.

Learned counsel for the petitioner has contended that the cheque placed on record is numbered as '173543' and the return memo of the bank also mentions the same number. However, a typographical mistake had been made while filing the complaint. The error in the complaint is neither willful nor on account of any negligence and the accused-respondent could not be prejudiced in any manner as only one cheque had been issued by him and he is aware of the fact that the cheque which had been dishonoured bears the number '173543'. It is further submitted that the trial Court has erred in rejecting the application by placing reliance upon ***Chhabra Fabrics Private Limited vs. Bhagwan Dass Proprietor of Dhingra Handicrafts, 2014(4) RCR(Criminal) 814.***

Learned counsel for the accused-respondent however, supports the impugned order.

I have perused the judgment passed in ***Chhabra Fabrics Private Limited (supra)***. That judgment was delivered in an appeal against acquittal wherein the issue involved was whether the cheque in dispute had been issued in discharge of enforceable debt or was a security cheque. After examining the evidence on record, this Court was of the opinion that the cheque in dispute was a security cheque and, thus, the acquittal was justified. In passing, a reference was also made to the fact that the cheque number was wrongly mentioned in the complaint. Issue of amendment of the complaint was not the subject matter of the said judgment and, therefore, the judgment of ***Chhabra Fabrics Private Limited (supra)*** is clearly distinguishable.

On the other hand, learned counsel for the petitioner placed reliance

vs. Kan Singh, 2004(2) RCR(Criminal) 22 and the judgment of the Bombay High Court in **Balasaheb vs. Abdulla, 2006(2) Crl.CC 365**. In the case of **Bhim Singh (supra)**. The issue was regarding amendment of the complaint as a wrong cheque number and date of cheque was mentioned in the complaint. After concluding that the mistake was typographical in nature, the order of the trial Court was set aside and the amendment was permitted. In the case of **Balasaheb (supra)** also the facts were similar and relying upon the ratio of **Bhim Singh (supra)** the amendment sought for was permitted.

In the present case also the error in the complaint is purely typographical as the original cheque bearing number '173543' is on record and the same number is also mentioned in the dishonoured memo. Thus, apparently the mistake is typographical. The High Court in exercise of jurisdiction under Section 482 Cr.P.C. has ample power to correct the errors in the pleadings of parties provided no prejudice is caused to them. Since the original cheque and the dishonoured memo are on record, it can not be said that by amending the complaint any prejudice would be caused to the accused-respondent.

In view of the above, the petition is allowed and the impugned order dated 18.02.2016 is set aside. The petitioner is permitted to amend the complaint in accordance with his application.

February 23, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No