

**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-17673-2013
Date of decision-05.11.2019**

Virender Singh and another

...Petitioners

Vs.

Dashrath

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Harkesh Manuja, Advocate for the petitioners.

Mr. Pradeep Panwar, Advocate for
Mr. Vishal Malik, Advocate for the respondent.

MANOJ BAJAJ, J. (Oral)

Petitioners (accused) have filed this petition under Section 482 Cr.P.C for quashing of the order dated 06.05.2013 (Annexure P-6), passed by the trial Court whereby amendment of complaint filed by respondent (complainant), under Section 138 of Negotiable Instruments Act, 1881 was allowed.

Learned counsel for the petitioners contends that the cheque bearing No.512082 dated 22.06.2010 was issued in favour of M/s D.N.Earth Movers, by the account holder, namely, M/s Vishal Construction Company. The said cheque amounting to Rs.3,50,000/- was signed by the proprietor, namely, Virender Singh. He contends that upon dishonour of the cheque on 24.06.2010, legal notice was served upon M/s Vishal Construction Company through its Managing Director, namely, Virender Singh. The said notice was

separately sent to petitioner No.1- Virender Singh as well describing him as Managing Director of the company. He submits that the complaint was filed by Dashrath son of Ram Kishan whereupon the cognizance was taken and process was issued. Subsequently, the application was filed on 05.03.2012 (Annexure P-4) seeking change in the name of the complainant as M/S D.N. Earth Movers as Managing partner of the firm and at the same time status of the accused-Virender Singh was sought to be changed from Managing Director to Proprietor. He submits that the trial Court had committed serious error of law in permitting the said amendment, which was opposed by filing a specific reply. He invited the attention of the Court to the reply (Annexure P-5) wherein it was mentioned that the application filed by the complainant seeks addition of party by way of amendment and if, permitted, it would amount to institution of a fresh complaint, beyond a period of limitation.

On the other hand, learned counsel appearing on behalf of the complainant has argued that the order passed by the trial Court is based on correct appreciation of the material on record. He submits that the basic structure of the complaint would remain intact keeping in view the contents of the cheque in question (Annexure P-1) and the legal notice (Exhibit C-3) dated 14.07.2010 sent by complainant to the notices. He submits that even complaint itself mentions the status of the Dashrath son of Ram Kishan as proprietor of M/S D.N.Earth Movers. He submits that in case the expression proprietor, is replaced with Managing Partner, it would not amount to substantive change in the complaint. It is further submitted that alteration in the status of accused Virender Singh as proprietor, instead of Managing

Director would not cause any prejudice to the accused.

Learned counsel for the petitioner has placed reliance upon judgment passed by the Hon'ble Supreme Court, titled as "***S.R.Sukumar Vs. S.Sunaad Raghuram***", ***2015 (3) R.C.R.(Criminal) 570*** and judgments passed by the Hon'ble Madras High Court, titled as "***K.Velmurugan Vs. N.Ganesan***", ***2011 (4) R.C.R.(Criminal) 695*** and another judgment, titled as "***K.K.Saravanakumar Vs. Saravanan***", ***2014 (11) R.C.R.(Criminal) 359***.

Learned counsel for the parties have been heard and with their assistance, I have gone through the case file carefully. A perusal of the cheque in question bearing No.512082 dated 22.06.2010 shows that it was issued in favour of M/s D.N.Earth Movers for a sum of Rs.3,50,000/- by M/s Vishal Construction Company which was signed by proprietor. The legal notice issued on 14.07.2010, clearly mentioned the names of the noticees as M/s Vishal Construction Company, Engineers and Contractors and Mr. Virender Singh who was described as Managing Director of the said firm. It may be added here that the legal notice was not confined to the cheque in question alone, but it had given the reference of other connected cheques as well. The name of the complainant/firm was clearly mentioned in the body of the notice and the detail of the accused was also contained. Similarly, a perusal of the head note of the complainant contained the name of the complainant/firm as well as the firm of the accused. Merely because the status of the Managing Partner of the complainant was mentioned as proprietor and Virender Singh was mentioned as Managing Director and bringing correction in their status would not materially alter the complaint.

The nature of amendment sought by complainant is cosmetic in nature and does not introduce any new facts, particularly when the necessary ingredients to constitute the offence remain the same. It may be correct that the Code of Criminal Procedure does not contain any specific provision for amendment of the complaint, but at the same time, certain curable infirmities in a complaint can be corrected by the trial Court. In *S.R.Sukumar Vs. S.Sunaad Raghuram's* relied upon by learned counsel for the petitioners, the Hon'ble Supreme Court has dealt with this issue and observed as under:-

“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 Ors., (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 focussed 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 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...”

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 not allow such amendment in the complaint.”

A careful perusal of the impugned order reveals that the trial Court has examined the facts and circumstances of the case carefully and rightly allowed the application filed by the complainant.

In view of the above, this Court does not find any reason to interfere. Resultantly, petition is dismissed.

(MANOJ BAJAJ)
JUDGE

05.11.2019
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No