

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2787/2017

DHARMADAS BHIVA JADHAV PETITIONER

VERSUS

ARUN BHIVA JADHAV AND ANR. RESPONDENTS.

Mr. Deepak Pandey, Advocate for the petitioner.

Mr.A.R. Kapadnis, APP for State.

CORAM : A. M. BADAR, J.

DATE: 30TH JANUARY 2020.

P.C.:

1. Heard learned counsel for the petitioner in this petition challenging allowing of application for amendment of complaint for offence punishable under Section 138 of the Negotiable Instruments Act in the revision petition filed by the complainant.

2. Learned counsel for the petitioner/original accused vehemently argued that amendment was not effected at the initial stage of trial as the complainant was well aware that if he effects the amendment then the complaint would be transferred to the file of concerned court of Mumbai. Amendment was sought to be effected when the cross examination of the complainant was over. It is further argued that the Judgment relied by the complainant before the revisional court is not applicable to the facts of the case.

3. I have considered the submissions so advanced and also perused the material placed before me.

4. Subject matter of the complaint was a cheque issued in the name of Bank of India branch at Mumbai. However, the complaint contained pleading to the effect that the cheque is in the name of Bank of India branch at Deorukh. This mistake was sought to be corrected by the complainant by

moving an application for amendment at Exhibit 28. Learned trial Magistrate rejected that application by holding that the complainant is negligent. However, the revisional court by impugned order held that mere typographical error was sought to be corrected and in the matter of **S.R.Sukumar Vs. S. Sunaad Raghuram (2015 ALL MR (Cri.) 2898** it is held by the Apex Court that amendment in criminal complaint is permissible. What is sought to be corrected by effecting amendment is name of the branch of the bank on which cheque was drawn. This can not be said to be intentional act on the part of the complainant. The complainant was nothing to be gained by not mentioning correct name of the bank in his own complaint. Future course which the law may take was not known to the complainant. Such knowledge at any rate cannot be attributable to the complainant. Moreover, object of criminal trial must be to dispose of the matter finally. Moving an application for amendment of compliant can not be said to be an attempt to

rectify the lacuna in case of prosecution. Negligence in pleadings can not be considered to be an inherent lacuna in the prosecution case.

5. No infirmity in the impugned order can be found. It can not be said that the revisional court has exercised its discretion illegally or arbitrarily.

6. In this view of the matter, the petition fails and same is dismissed.

(A. M. BADAR, J.)