

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 8826 of 2015 (O&M)
Date of Decision: 12.3.2020

Dr. Sangeeta Aggarwal

.....Petitioner

Versus

Rajbir and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. S.K.Yadav, Advocate
for the petitioner.

None for respondent No. 1.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARNARESH SINGH GILL, J. (ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of order dated 10.12.2014 (Annexure P-5) passed by learned Additional Sessions Judge-cum-MACT, Faridabad vide which the application filed by respondent No. 1 for amendment of title of the compliant, has been allowed.

Learned counsel for the petitioner has argued that respondent No. 1-Rajbir had filed a criminal complaint under Sections 406/315/323/304-A/506 IPC and the said compliant was dismissed on 21.9.2012 (Annexure P-2). During the pendency of the revision, the complainant moved an application for amendment of title of the complaint (Annexure P-4) on the ground that Archna Goyal has been shown as respondent No. 2 whereas her real name is Sangeeta Agarwal wife of Sandeep Goyal @ Sandeep Agarwal. Learned counsel further submits that in the absence of Archna Goyal, the said application was allowed in a

routine manner vide the impugned order dated 10.12.2014 (Annexure P-5).

He has placed reliance upon a decision of the Apex Court in '***S.R.Sukumar versus S. Sunaad Raghuram 2015(3) R.C.R. (Criminal) 570.***'

No one has appeared on behalf of respondent No. 1.

I have heard the learned counsel for the petitioner and have gone through the case file.

In the present case, complainant-respondent No. 1-Rajbir had filed a criminal complaint. The trial Court vide order dated 21.9.2012 (Annexure P-2) dismissed the complaint while observing that there was no *prima facie* evidence against the accused. Aggrieved against the said order, respondent No. 1 preferred a revision petition and during the pendency of the said petition, he moved an application for amendment of title of the complaint which was allowed by the Appellate Court vide order dated 10.12.2014 (Annexure P-5).

It is a settled law that if there is likelihood of prejudice to the other side by way of amendment, the same cannot be allowed. The Hon'ble Supreme Court in ***S.R.Sukumar's case (supra)*** has held 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 [pic]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.

It is a case where respondents No. 1/complainant in the original complaint wrongly mentioned the name of petitioner as Dr. Archana Goyal instead of Dr. Sangeeta Aggarwal and during the pendency of the complaint, no such objection was raised by respondent No. 1/complainant and the complaint was dismissed on 21.9.2012 against which revision was filed on 22.12.2012. It is during the pendency of the revision petition, an

application for amendment of title of complaint was moved with averments that name of the petitioner has been wrongly mentioned in the revision petition and that be rectified.

Even though the revision petition is not maintainable against the dismissal of the criminal complaint but allowing the amendment of title in criminal revision, vide an application, without any reason or explanation regarding omitting the actual name which causes prejudice to the petitioner, such application cannot be allowed and that too without summoning.

Since allowing the application for amendment of title from Dr. Archana Goyal to Dr. Sangeeta Aggarwal will be a non-curable infirmity which will cause prejudice to the petitioner in revision as the complaint, based on the same title, had already been dismissed.

In view of the above, the petition is allowed. The impugned order dated 10.12.2014 (Annexure P-5) is set aside and the Court before which revision is pending, is directed to dispose of the same in accordance with law.

It is made clear that I have not expressed any opinion on the merits of the matter.

(HARNARESH SINGH GILL)
JUDGE

March 12, 2020
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No