

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 377/2022

M/s. A. S. Polymers Pvt. Ltd.,
having its registered office at Meghdoot
Heights Plot No. 172, Flat No. 301, 4th
Floor, SA Road, Shraddhanand Peth,
Nagpur – 440022 through its Director
Shri Surendra Sharma.

... **PETITIONER**
(Original Complainant)

VERSUS

M/s. Sun Plastics, having its
office at 38, Goyal Market,
Siyaganj, Ware House Road,
Indore – 452001 through its
proprietor, Mr. Prakash S/o
Mithulal Goyal
also at,
M/s. Sun Plastics 12 Dumper
Godown Gram Pigdambar,
Indore – 453331.

... **RESPONDENT**
(Original Accused)

Mr. S. S. Dewani, Advocate with S. D. Dewani, Advocate for
petitioner.

Mr. Anmol S. Gupta, Advocate h/f Mr. Pawan Jain, Advocate
for respondent.

CORAM : VINAY JOSHI, J.
RESERVED ON : 10.08.2022
DATE OF JUDGMENT : 12.08.2022.

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. A short challenge has been raised to the rejection of the amendment application by the Trial Court. The petitioner is complainant in SCC No. 316407/2015 relating to the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I. Act'). The petitioner sought amendment into the cause title of the complaint. Precisely, the complaint is filed by M/s. A. S. Polymers Private Ltd. Co. through its Manager Mr. Surendra Sharma. It is the petitioner's contention that Mr. Surendra Sharma is a Director and thus, a typographical error occurred by mentioning him as a "Manager" instead of "Director". To that extent, the petitioner sought amendment in the complaint, however it was rejected.

4. The learned counsel appearing for the petitioner would submit that the proposed amendment was purely a typographical curable defect and therefore, the Trial Court ought to have allowed the amendment. He would submit that throughout the petitioner came

with a case that he is a Director of Private Limited Company. It is submitted that the petitioner and his son who is another Director, has examined in the complaint. However, the respondent/accused has not challenged that petitioner is a Director of the Company. In short, it is the submission that no prejudice would be caused to the respondent, if such amendment has been carried out. The petitioner has also filed supporting documents in the nature of certificate of incorporation and a copy of resolution to indicate that he is a Director of said Company.

5. The other side resisted this application by contending that at the fag end of the Trial, the amendment cannot be sought. In support of said contention, reliance is placed on certain decisions. Moreover, it is contended that the belated amendment would cause prejudice to the rights of the respondent/accused.

6. There is no dispute that a complaint is filed by the Private Limited Company through Mr. Surendra Sharma who has been stated as a Manager. The petitioner has produced copy of certificate of incorporation along with copy of resolution showing that he is one of the Director of the Company. Minutes of the meeting of the Board of Directors has been produced to support said contention. It reveals that the petitioner and his son has been examined, however the other side has not challenged that they are Directors of the Company. The learned

counsel appearing for the petitioner by placing reliance on the decision of this Court in case of **Dharmadas Bhiva Jadhav Vs. Arun Bhiva Jadhav and another**, 2021(1) AIR Bom.R (Cri) 684, would submit that amendment in criminal complaint is permissible. He has also relied on the decision of the Supreme Court in case of **Varun Pahwa Vs. Renu Chaudhary**, (2019) 15 SCC 628, wherein it is ruled that amendment rectifying procedural mistake in the cause title of suit/memo is permissible.

7. It is evident that the petitioner has come up with a case that he is a Director of Private Limited Company. The petitioner led evidence, wherein he never posed himself as a Manager. The respondent/accused has cross-examined the petitioner, however, there is no defence that he is not a Director of Company. Likewise, the petitioner has examined his son as another Director, however, it is not denied in cross-examined that the petitioner is a Director of the Company. It is evident that what is sought to be corrected is the nomenclature of petitioner which cannot be said to be intentional act on his part. The petitioner was nothing to gain by making incorrect nomenclature. Moreover, the respondent/accused has not challenged that the petitioner is not the Director of the Private Limited Company.

8. The learned counsel appearing for the respondent relied on the decision of the Supreme Court in case of ***A. C. Narayanan Vs. State of Maharashtra and another, 2015(2) M.P.L.C. 6 (S.C.)***, wherein the issue about leading evidence through power of attorney was for consideration which has no relevance to the facts of this case. Then the respondent relied on the another decision of the Supreme Court in case of ***Subodh S. Salaskar Vs. Jayprakash M. Shah and another, 2008 SAR (Criminal) 745***, wherein my attention has been invited to para 30 of the judgment. The Supreme Court has observed that the Court has no jurisdiction to allow the amendment of the complaint at a later stage. However, the facts of the said case are quite distinct. The said complaint under Section 138 of the N.I. Act was barred by limitation and at belated stage, the complainant tried to add Section 420 of the Indian Penal Code and in those fact, the amendment was rejected. That being the distinct position, it would not assist the respondent in any manner. Finally, the respondent relied on the decision of the Allahabad High Court in case of ***Fragrant Leasing and Finance Company Ltd. Vs. Jagdish Kathuria and another, 2008(I) C.L.D.C. 59***. The said decision relates to the competency of the petitioner without filing authority letter. Thus, being distinct fact, it is of no assistance.

9. The Supreme Court in case of *S. R. Sukumar Vs. S. Sunaad Raghuram (2015) ALL MR (Cri.) 2898*, ruled that amendment seeking curable infirmities in complaint can be allowed. It is apprent that inadvertent mistake has been occurred since the petitioner has throught out came with a case that he is a Director of Company and therefore, there is no difficulty in allowing the amendment. The Trial Court erred in appreciating the facts as well as position of law.

10. In view of above petition is allowed. Impugned orders dated 30.03.2022 and 08.06.2022 are hereby quashed and set aside. The amendment to the extent of correcting cause title sought by the petitioner is allowed.

11. Petition stands disposed of in above terms.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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