

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

CRIMINAL WRIT PETITION No. 778/2021.

Deepak Shridhar Weginwar,
Director of Laxmikant Trading Company,
Aged 61 years, Occupation Business,
resident of Mul Road, Chandrapur. ... PETITIONER.

VERSUS

Varun Gokul Pande,
Prop. Of Varun Motors,
Aged 38 years, Occupation
Business, Office at M.I.D.C. Sewagram,
Wardha, Tahsil and District
Wardha.
resident of Mhada Colony,
Sewagram Road, Wardha,
Tahsil and District Wardha. ... RESPONDENTS.

Mr. A.A. Dhawas, Advocate for the Petitioner.
Mr.R.D. Wakode, Advocate for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : JULY 13, 2022.

ORAL JUDGMENT :

Heard. Considering the controversy involved in the matter and by consent of the learned Counsel for the parties, Criminal Writ Petition is taken up for final disposal at the stage of admission by issuing Rule, making the same returnable forthwith.

2. The petitioner is the original complainant in Summary Criminal Case No.1510/2009 for the offence punishable under Section 138 of the Negotiable Instruments Act. The petitioner has applied to the trial Court for carrying out amendment in the cause title of the complainant. To be specific, the complaint was filed in the name of “Laxmikant Trading Company”, instead of which the amendment is sought as “Laxmikant Trading Company Private Limited”. Thus, the amendment was to the extent of adding the status of the company as “Private Limited”. The trial Court has rejected the amendment application, and therefore, the matter is before this Court.

3. The learned Counsel appearing for the petitioner has submitted that it is an inadvertent mistake, because all the correspondence, as well as the disputed cheque also bears a reference as “Private Limited Company”. True, the cheque as well as the exchange of notices equally bears a reference of the Company as “Private Limited”. Thus, it can be easily gathered that it is an inadvertent mistake. It is a settled law that the amendment seeking curable infirmities in complaint can be allowed, for which useful reference can be made to the decision of Supreme Court in case of *S.R.Sukumar .vrs. S.Sunaad Raghuram* – (2015) 9 SCC 609.

4. The resistance of other side is only on the count that the petitioner has intentionally caused the delay in seeking amendment. It is brought to the notice of the Court that the complaint is of the year 2009, whilst the amendment application was filed after a long gap of 10 years. The amendment is objected by submitting that while seeking some other amendment at the earlier point of time, the complainant could have sought for this amendment, but, he did not. It is submitted that due to negligence on the part of the complainant, the case is pending for years together.

5. One cannot say that the complainant has purposely not sought the amendment at the earlier occasion because after all it would at his detriment. Concededly there is considerable delay of 10 years in seeking the amendment. On mere technicalities the complainant shall not be deprived from putting his cause by correcting the nomenclature. However, as there was prolonged delay, the other side can be compensated by way of cost. In view of that, the amendment being of formal nature, the Writ Petition deserves to be allowed and it is allowed accordingly.

The impugned order dated 29.08.2019 passed below Exh.161 in Summary Criminal Case No.1510/2009 by the Judicial Magistrate First Class, (Court No.8), Chandrapur is hereby quashed and set aside. The application for amendment filed by the complainant is hereby allowed, however, the same shall be subject to payment of costs of Rs.10,000/- to be paid to other side by the complainant before the trial Court, within a period of two weeks from today.

Since the complaint is of the year 2009, the learned trial

Court shall endeavor to decide the same within a period of six months from the date of receipt this order.

6. Rule is made absolute in aforesaid terms.

JUDGE