



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM :

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRIMINAL REVISION CASE NO.1051 OF 2021

AND

CRL.M.P.NO.13724 OF 2021

J.Magdalene Rejula

...Petitioner / Accused

..Vs..

K.Ramesh

...Respondent / Complainant

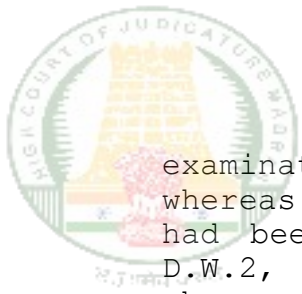
PRAYER : Criminal Revision Case filed under Section 307 & 401 of the Code of Cr.P.C to call for the records and set aside the orders dated 20.11.2021 passed in Crl.M.P.No.1619 of 2021 in C.C.No.1738 of 2017 by the learned XX Metropolitan Magistrate, Allikulam, Chennai 600 003.

For Petitioner : Mr.M.Murali Dharan

O R D E R

This Criminal revision has been filed against the order passed by the learned XX Metropolitan Magistrate, Allikulam, Chennai 600 003 made in Crl.M.P.No.1619 of 2021 in C.C.No.1738 of 2017 dated 20.11.2021, allowing the amendment application filed by the respondent/complainant,

2.The brief facts of the case is that the respondent/complainant has filed C.C.No.1738 of 2017 against the petitioner/accused for the offence under Section 138 of N.I Act in respect of dishonour of cheque bearing No.024337 dated 12.09.2016 for a sum of Rs.5,00,000/- drawn on Tamilnadu Mercantile Bank Limited, towards repayment of the loan. When the said cheque was returned by the Manager of the Tamilnadu Mercantile Bank Limited, he had issued a memorandum dated 17.09.2016 which was marked as Ex.P2 wherein the cheque number was mentioned as 024337. Based on the memorandum dated 17.09.2016, the respondent/complainant has mentioned the cheque number as 024337 in the legal notice dated 17.10.2016, which was marked as Ex.P3. The cheque number was given as 024337 in the complaint dated 16.11.2016 and also in the proof affidavit dated 15.12.2018. The Manager of Tamilnadu Mercantile Bank Limited, Anna Nagar Branch was examined as D.W.2 and during the chief-



examination, he has deposed that the cheque number was 054285 whereas in the memorandum dated 17.09.2016, the cheque number had been mentioned as 024337. Only after the deposition of D.W.2, the respondent/complainant had come to know that the cheque number is 054285 and not 024337, as mentioned by him in the legal notice and the complaint. The respondent/complainant has stated that mentioning the cheque number wrongly as 024337 instead of 054285, is neither wilful nor wanton but only due to the reason the Manager D.W.2 had wrongly mentioned the cheque number in his memorandum dated 17.09.2016 (Ex.P2) as 024337. It was further stated by the respondent/complainant that the ambiguity was due to the fact that both the numbers were given in the cheque and that the respondent/complainant had taken clue from the memorandum dated 17.09.2016 and he had stated the cheque number and thereby he had filed a petition seeking to permit to amend the cheque number as 054285 in paragraph 4 of the complaint and in item No.1 of the list of the documents mentioned in the last page of the complaint.

3.The petitioner/accused had filed a counter stating that the cheque number is 054285 and that in the statutory notice dated 17.10.2016, the respondent/complainant had mentioned the cheque number as 024337 and he had also given the same number in the complaint and proof affidavit and that the amendment cannot be allowed at the stage of trial.

4. The trial court relying on the judgment of the Hon'ble Apex Court in S.R.Kumar vs Sunaad Raghuram, reported in (2015) 9 SCC 609, had allowed the petition against which, the present revision has been filed.

5.Learned counsel for the petitioner would submit that the number in the cheque is 054285 whereas the respondent/complainant had given a wrong number in the statutory notice and also in the complaint and in the proof affidavit filed by him. Later only when the Manager of the Bank was examined as D.W.2 on behalf of the petitioner/accused, the discrepancy came to light and thereafter only he had filed petition seeking for amendment. Though in the case of S.R.Kumar vs Sunaad Raghuram, the Hon'ble Supreme Court has held that a curable legal infirmity can be cured by formal application for amendment, the stage at which such amendment can be permitted has to be taken into account. In this case, the petition has been filed only during the course of trial and that too, when the matter was brought to light by the defense and at that stage, the amendment could not be permitted and thereby, he would seek to set aside the impugned order.

6. Heard the learned counsel for the petitioner and perused the materials available on record.



7. The respondent/complainant had filed the complaint under Section 138 of Negotiable Instruments Act against the petitioner/accused in respect of the dishonour of the cheque dated 17.09.2016 for Rs.5,00,000/- drawn on Tamilnadu Mercantile Bank Limited, Kayamozhi Branch. The cheque had been marked as Ex.P1. Perusal of the copy of Ex.P1 shows that both the numbers viz., 054285 and 024337 are available in the cheque. Further, the return memorandum issued by the Bank has been marked as Ex.P2. In Ex.P2, the cheque number has been mentioned as 024337. It is not a case where an attempt has been made by the respondent/complainant to introduce a different number which is not available either in the cheque or in the return memo. There is no other discrepancy with regard to the cheque.

8. This Court finds it to be a genuine and bonafide error by the respondent/complainant based on the return memorandum issued by the Bank. The Hon'ble Apex Court in S.R.Kumar vs Sunaad Raghuram reported in (2015) 9 SCC 609, has held that though there is no specific provision in Cr.P.C. to amend the complaint or petition filed under Cr.P.C., if amendment sought to be made relates to a simple infirmity which is curable by means of formal application for amendment and by allowing such amendment, no prejudice would be caused to either side, such amendment could be made. In the opinion of this Court, it is only a curable infirmity and by allowing the amendment no prejudice would be caused to the petitioner/accused. As stated earlier, the respondent/complainant has not attempted to introduce a number which is totally different to the proceedings and there is no other discrepancy and all other particulars tally with the notice and complaint. The view taken in S.R.Kumar's case referred to supra has also been followed by the Apex Court in Kunapareddy alias Nookala Shankar Balaji vs Kunapareddy Swarna Kumari, 2016 (11) SCC 774.

9. The petitioner/accused has attempted to take undue advantage of a genuine mistake which is curable. There is no infirmity or error in the order passed by the trial court. This Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

vri/shk



To

1. The XX Metropolitan Magistrate,
Allikulam,
Chennai 600 003.

2. (do through) The Chief Metropolitan Magistrate,
Egmore, Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.1051 of 2021

NMI (CO)
RVM(12/01/2022)