

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 433 OF 2020

Shri. Venkatesh Multistate Co-operative
Credit Society Ltd.

Through its authorized representative
Shri. Mangesh s/o Mukund Dehendkar,
Age 32 years, Occu.: Service,
R/o 31, Eaikya Nagar Colony,
Pipeline road, Savedi,
Ahmednagar – 414003.

...Petitioner

Versus

Pradip s/o Purushottam Sarje,
Age Major, Occ.: Agril & Business,
R/o Warkhed (Deviche), Tq. Newasa,
District Ahmednagar.

...Respondent

...

Advocate for Petitioner : Mr. Bide Dnyaneshwar A.

Advocate for Respondent : Mr. R. V. Gore

...

CORAM : KISHORE C. SANT, J.

DATE : 16th FEBRUARY 2023.

ORAL JUDGMENT :

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

2. A small grievance of the petitioner is that by filing complaint under Section 138 of the Negotiable Instruments Act, the figure of the loan amount is wrongly stated as Rs.1,00,000/- instead of Rs.10,00,000/-. The petitioner/Multistate Co-operative Society therefore filed an application for correction of the said figure. The said application came to be opposed by the accused/respondent. The learned Judicial Magistrate First Class, Ahmednagar, after considering the application rejected the application by order dated 09.12.2019. It is thus the petitioner is before this Court. The learned trial Court while rejecting the application has only stated that the said mistake cannot be said to be typographical error as at-least at three places, the said amount is given. When the amount is wrongly typed as Rs.1,00,000/- in the demand notice, complaint and even in the affidavit, in view of the cheque, it cannot be said to be typographical error. The following judgments relied upon by the petitioner are held not applicable.

- i. The Hon'ble Bombay High Court in case of Balasaheb Vs. Abdulla, reported in 2006 (2) Bom.C.R.(Cri). Page No.699.
- ii. The Hon'ble Bombay High Court in case of Amol Sheth Vs. M/s. Hariom Trading, reported in 2013 (1) Bom.C.R.(Cri.) page No.152.

- iii. The Hon'ble Rajasthan High Court in case of Bhimsing Vs. Kansing, reported in 2004(2) DCR, page No.158.

. In fact all these three judgments clearly in favour of the petitioner. The learned Advocate for the petitioner therefore submits that the learned trial Judge has committed a mistake and his application at Exhibit-13 ought to have been allowed by the Court.

3. Mr. Gore, learned Advocate for the respondent vehemently opposes the petition mainly on three grounds; first that there is no provision under the Code of Criminal Procedure to correct the pleadings. In the notice also amount of Rs.1,00,000/- is written. At last, he submits that there is delay of four months in filing of this application and therefore cannot be said to be a bonafide application.

4. After hearing the parties, this Court finds that by now it is well settled that typographical errors can be corrected in the complaint under Section 138, since it is in respect of the civil liability. This Court finds that the trial Court has committed a mistake by not allowing the application. In view of the same, this Court finds that the petition

deserves to be allowed and the same is hereby allowed in terms of prayer clause 'C' and 'G'.

5. With this, the Criminal Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeeb.