

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1360 OF 2022

Balaji s/o. Motiram Dhage .. Petitioner
Age.40 years, Occ. Service,
R/o. Zill Parishad School,
Aswandari Tanda (Under Gortha Kendra),
Tq. Umari, Dist. Nanded.

Versus

1. Subhashchandra s/o. Bansilal Joshi .. Respondents
Age.72 years, Occ. Nil,
GPA holder
Santosh s/o. Subhashchandra Joshi,
Age.45 years, Occ. Private Service,
R/o. Balaji Galli, Umari, Tq. Umari,
Dist. Nanded
At present Plot No.4, Anand Society,
Ganeshnagar, Wadgaon City,
Pune-14.
2. The State of Maharashtra
Through Police Inspector,
Police Station, Umari, Tq. Umari,
Dist. Nanded.

Mr.S.S. Gangakhedkar, Advocate for the petitioner.
Mr.R.K. Temkar, Advocate for respondent No.1.
Mr.PM. Kulkarni, APP for respondent No.2/State.

CORAM : KISHORE C. SANT, J.
DATED : 16.01.2023

ORAL JUDGMENT :-

01. Rule. Rule made returnable forthwith by consent of the parties.

02. The petitioner approached this Court challenging the order passed by the learned Judicial Magistrate, First Class, Umri below application Exh.41 in SCC No.108 of 2018 dated 02.09.2022. The learned JMFC by way of the impugned order was pleased to allow the application filed by the complainant seeking amendment and to correct the date of presentation of the cheque in the bank.

03. The complaint came to be lodged by the respondent in the Court of learned JMFC under section 138 of the Negotiable Instruments Act. In the complaint, the date of cause of action is stated to be 02.02.2018. It is the case of the complainant that the cheque issued by the present petitioner-accused for an amount of Rs.7,50,000/- was presented for encashment on 02.02.2018. Notice was sent making demand of the amount and after failure to pay the amount, the complaint was lodged. The process was issued and the trial started.

04. The accused filed application pointing out that in the complaint the date of presentation is stated to be 02.02.2018. He, thereafter, averred in the application that the cheque bears date as 31.10.2017. The cheque was, thus, valid only till 31.01.2018. However, the cheque was presented on 02.02.2018 i.e. after it lost its validity. Since on that date the cheque was not valid, he prayed for dropping of the proceedings for the offence punishable under section 138 of the Negotiable Instruments Act. This application was moved on 04.03.2021.

05. The learned JMFC passed order on the same date observing that the process was issued on 13.04.2018 and the same was not challenged and same is filed after about three years after the order of issuance of process.

06. The complainant realized that there is typographical mistake while typing the date of presentation, the complainant therefore, filed application stating that as a matter of fact the cheque was presented on 31.01.2018 and on that date the cheque was very much valid. Due to typographical error, the date of presentation is typed as 02.02.2018. By looking at the bank intimation, it is seen that the intimation of the bank bears

date as 02.02.2018. The accused filed say to the application stating that there is no provision of amendment to the pleadings under the Criminal Procedure Code. There is no provision to amend the complaint even in the Negotiable Instruments Act and therefore such amendment cannot be permitted and prayed for rejection of the application. It is further mentioned in the say that since the complaint itself was time barred, by carrying out amendment, now the complaint cannot be made maintainable. It is lastly stated that the amendment application is filed only after filing of the application Exh.35 by the accused. The complainant has not filed receipt showing that the cheque was presented on 31.01.2018. Learned Magistrate, however, was pleased to allow the application and directed the complainant to amend the complaint before the next date. It is the order dated 02.09.2022, which is under challenge in the present petition.

07. Learned Advocate for the petitioner submitted that under the garb of correcting the date, in-fact, the complaint which was not maintainable would now become maintainable. For more than 3 ½ years no steps were taken to correct the alleged typographical mistake. It is only when the accused filed application for dropping of the proceedings, application came to

be moved. He fairly concedes that the amendment can be made to complaint, however, only such amendment, which does not cause prejudice to the rights of the parties, can only be permitted. In this case, it is not a typographical mistake only in the number of cheque or name of person, but it is in respect of date of presentation of cheque. Since the date of presentation of cheque goes to the root of the matter and decides cause of action for filing the complaint, in such cases, amendment should not have been allowed or permitted. If the date given in the complaint is seen, it is clear that on the date of presentation of cheque, as stated in the complaint, the complaint was not maintainable. He further pointed out that at two places there is reference of the date of presentation of the cheque. First while mentioning the date of cause of action and secondly in para 4 of the complaint. Thus, he submits that this cannot be said to be inadvertent mistake or mere typographical mistake. He submits that because of the mistake, if some benefits accrued to the accused, same cannot be take away by amending the complaint.

08. The learned Advocate for the petitioner placed reliance on the judgment delivered by this Court in Cr.W.P. No.774 of 2014 in the case of Harbansingh s/o. Lalsingh Sethi Vs. Rahul s/o. Sopan Hole. He also placed

reliance on the judgment reported in 2015 AIR SCW 4066 in the case of S.R. Sukumar Vs. Sunaad Raghuram.

09. Learned Advocate for the respondent/complainant vehemently opposes the petition stating that the liability under section 138 of the Negotiable Instruments Act is a civil liability. Thus, it is a proceeding which is quasi-civil proceeding and amendment is very much permissible. The amendment is not the amendment in the pleading. It is correction of typographical mistake committed while drafting the complaint. This mistake is inadvertent mistake. Date 02.02.2018 is date of bank return memo. It is the date of presentation of cheque that decides the limitation. If the cheque was valid on the date of presentation and if it can be proved by the complainant, then certainly that would prevail upon typographical mistake. Merely because of typographical mistake, one cannot be non-suited from enforcing his rights. Ultimately, he has to prove his case by leading evidence before the Court and thus allowing the complainant to correct the date is only to facilitate him to prove his case by leading evidence and it does not create or take away any right of any of the parties, but such corrections are necessary only for the purpose to coming to the truth and to facilitate the Court while

adjudicating lis before the Court. He relied upon judgment reported in **2006 ALL MR (Cri) 783** in the case of **Balasaheb s/o. Pandharinath Borade Vs. Abdulla s/o. Mohammad Bagwan** and also relied upon a judgment delivered by this Court at Principal Seat at Mumbai in **Writ Petition No.2787 of 2017** in the case of **Dharmadas Bhiva Jadhav Vs.Arun Bhiva Jadhav & Anr.**

10. By considering the judgments, it is clear that the amendment in complaint under section 138 of the Negotiable Instruments Act is not barred and is permissible. What needs to see is the nature of the amendment. By going through the present case it is clear that it was not an amendment of pleadings or it is not introducing any new cause of action. It is merely correcting typographical mistake of presentation of cheque.

11. It is pointed out that in the earlier round of litigation the parties had come to this Court by filing criminal writ petition No.564 of 2022, wherein this Court had directed to the learned Trial Judge to expedite trial and dispose off the same preferably within three months from the date of receipt of the order court dated 26.07.2022. Keeping this in mind, it is expected of the learned Trial Judge to dispose off the complaint as early as

possible and endeavour shall be made to dispose off the same within six months from today.

12. It is duty of every party to the proceeding to be careful while making complaint, application etc. so as to avoid inconvenience not only to the Court but also to the parties. Since amendment is allowed, the learned Advocate for the petitioner submits that it is necessary to impose some costs on the complainant by placing reliance in the judgment of Harbansingh (Supra). Considering this that Court machinery is unnecessarily used because of one inadvertent mistake of the complainant, this Court finds that the accused can be compensated if the complainant is permitted to carry out the amendment. The complainant is directed to deposit costs of Rs.7500/- (Rupees Seven Thousand Five Hundred) towards costs in the Trial Court to be paid to the accused or to pay directly to the accused as a condition precedent before proceeding further with the Trial.

13. Thus, considering this aspect, this Court finds that the learned Trial Court has not committed any mistake while passing the impugned order. It is made clear that it is for the parties to prove their own case in the Trial.

By this order, this Court has not made any observations on the merits of the matter, except holding that no illegality or perversity is committed by the Trial Court while passing the impugned order. This Court finds that no interference is called for while exercising jurisdiction under section 227 of the Constitution of India. With these observations the writ petition is dismissed with costs as observed above. Rule discharged.

[KISHORE C. SANT, J.]