

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

51 CRIMINAL WRIT PETITION NO.1419 OF 2022

**MANAGING DIRECTOR, BHULESHWAR SUGAR WORKS LTD.,
PURANDAR AND ANOTHER
VERSUS
N.R. FABRICATORS AND ERECTORS, SHRI. N.R. SATPUTE
(DIRECTOR) AND ANOTHER**

Mr. Avinash R. Borulkar, Advocate for the petitioner
Mr. S. R. Andhale, Advocate for the respondent No.1
Mrs. D. S. Jape, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 09th JANUARY, 2023

P. C.

1. Heard the learned advocate for the parties. By consent of parties, the matter is taken up for final disposal.

2. Respondent No.1 had filed a complaint in the court of learned Chief Judicial Magistrate, Ahmednagar bearing SCC No. 564/2016 for the offences punishable under Section 138 whereby the accused persons are shown as below:

“1. Managing Director,
Bhuleshwar Sugar Works Ltd.
R/o. Gut No. 181, Dist. Pune,
Office-E 12/4, MIDC, Jejuri,
Tq. Purandar, Dist. Pune, 412303”

3. The complaint is proceeded. Evidence is also

recorded and the application came to be filed below Exh. 194 by the original complainant seeking amendment in the name of accused No.1 by deleting the word 'Managing Director' and to show accused No.1 as below;

“1. Bhuleshwar Sugar Works Ltd.
R/o. Gut No. 181 Rise, Tq. Purandar
Dist. Pune, Office-E 12/4, MIDC Jejuri,
Tq. Purandar, Dist. Pune, 412303”

4. The petitioner filed its say opposing the application stating that no such amendment can be made as there is no provision in the Criminal Procedure Code. There would be a change of identity stating that Managing Director of the petitioner factory is different than the factory namely Bhuleshwar Sugar Works Ltd and thus entire evidence will have to be raised in respect of Bhuleshwar Sugar Works Ltd. He submits that in fact while filing the complaint itself the complaint ought to have in the name of Bhuleshwar Sugar works Ltd. in view of Section 141 of the Negotiable Instruments Act which reads as below:

Section 141: Offences by Companies-(1) If the person committing an offence under Section 138 is a company, every person who at the time of offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

5. Reading section 141 the learned advocate for the

petitioner submits that thus it was necessary to show Bhuleshwar Sugar Works Ltd. itself as respondent since it is not shown. As such the complaint itself was not maintainable. For this reason application for amendment is not maintainable and amendment would be against the law.

6. Learned Chief Judicial Magistrate, Ahmednagar by judgment and order dated 05-07-2022 held that it is typographical mistake, therefore, words Managing Director is shown about Bhuleshwar Sugar Works Ltd. and it should have been Bhuleshwar Sugar Works Ltd. through the Managing Director. As such there is no change of identity as the notices were already issued. By considering the judgment Maan Agro Centre Vs EID Parry (India) Ltd and another reported in 2005 ALL MR (Cri) 934, the application came to be allowed by order dated 05-07-2022.

7. The petitioner is challenging the said order by filing criminal revision No. 64 of 2022 in the court of Sessions Judge, Ahmednagar. Learned Sessions Judge, Ahmednagar after considering various judgments and the arguments dismissed the criminal revision by order dated 08-09-2022 by maintaining the order dated 05-07-2022 passed by the learned Chief Judicial Magistrate, Ahmednagar in RCC No. 564 of 2016 below Exh.194. While considering the revision, learned Sessions Judge, has relied upon various judgments and has come to a conclusion

that by making change as prayed for there would be no change of identity of the accused persons. The petitioner before this court has vehemently submitted that in view of section 141 of the N. I. Act it is very much necessary for the complainant to show the accused with specific description. It is not only the case of giving wrong description, but if the amendment is allowed, the identity of the accused would be changed and therefore, it is not permissible. He argued that since inception of the court was required to be taken by the complainant, the complainant has filed application after the evidence is over and when the case is for hearing at this stage, making any change would certainly cause serious prejudice to the petitioner and they will have to change their entire evidence.

8. Learned advocate for respondent No.1 vehemently opposes the petition. He produced before this court the following judgments in support of his case.

1. *Oswal Finlease Private Limited Vs State of Rajasthan reported in 2014 All MR (Cri)*
2. *Maan Agro Centre Vs Eid Parry (India) Ltd reported in 2005 All MR (Cri) 934.*
3. *Amol Shripal Sheth Vs M/s Hari Om Trading Co. & Ors reported in 2012 ALL MR (Cri)3595*

9. In the case of *Oswal Finlease Private Ltd.* (supra) the high court has held in para No. 5.5 and 6.6 which reads as below:

5.5 *There is no dispute about the fact that wrong cheque*

number has been narrated in the complaint and affidavit in support of the same also contains same wrong cheque number but at the same time it is also true that impugned cheque, return memo from bank and notice which were presented along the complaint bear the cheque number which the present petitioner now wants to correct and the court below while taking cognizance should be vigilant that complaint and affidavit should contain the same cheque number which has been placed on record.

6.6 Contention of the learned counsel for the petitioner that mistake is bonafide seems to be true. Respondent has relied on 2012 (2) Cr. L. R. (Raj) 904, M. R. Choudhary Vs State of Rajasthan where the complaint was filed about a particular cheque whereas cheque submitted before the trial court was different. Hence the accused was acquitted but here in the present case, present petitioner wants to rectify his bonafide mistake. Further reliance has been placed on AIR 2008 SC 3086 : 2008 ALL SCR 1761 Subodh S. Salaskar Vs Jaiprakash M Shah and ors where on the facts of the case, amendments on the complaint has been disallowed. But here in the present case, when complainant has been cross examined, the mistake came to the notice of complainant and application for the rectification has been moved and no person could be penalized for his bonafide mistake.

10. In the *Maan Agro Centre* (supra) the High court has held in paragraph Nos. 8, 10 and 11 as under:-

8. The learned counsel for the petitioner submitted that the complainant was aware of the name of the proprietor of Maan Agro Centre because it is nowhere mentioned in the application (Exh.31) that he was not aware of the name. He pointed out that on the contrary the application shows that due to oversight the name of the proprietor Aminullah Khan remained to be mentioned in the complaint and in order to avoid technical complications, correction in the description of the accused was sought. The learned counsel for the petitioner pointed out that it was only in reply to the application (Exh.34) wherein it was contended by the complainant that the name of the proprietor was not known to the complainant. He, therefore, submitted that though the complainant was aware of the name of the proprietor, he chose to describe the accused as Maan Agro Centre through its proprietor without mentioning the name of the proprietor. He submitted that proprietary concern is not a juristic person and it cannot be prosecuted in its name. The person who is the proprietor of the proprietary concern, alone can be prosecuted. However, in the absence of the name of the proprietor, the complaint was liable to be dismissed and the trial Court rightly dismissed the same.

10. In support of these submissions, the learned counsel for the petitioner relied on the following cases :

i) Behram S. Doctor v. State of Maharashtra, 2003(4) Mh.L.J. 506 (B) 2003 All MR (Cri) 1633 wherein it is observed as under:

"There is no provision in Criminal Procedure Code by which a complainant can make a prayer to the Magistrate for permitting him to amend the complaint by changing the name of the accused and substituting one accused by another and alleging that the substituted accused had committed the alleged offence."

ii) Anas Industries v. Suresh Bafna, 2000 All.M.R. (Cri) Journal 13 wherein it is held as under:

"Anas Industries is the accused, and it is being represented by Ram Mohan. When Anas Industries is not a judicial person, it cannot be said that Ram Mohan can represent a non-juridical entity."

Thus the complaint against Anas Industries which is not a juridical person was held to be not maintainable.

iii) Sri Sivasakthi Industries v. Arihant Metal Corporation, 1992 Company Cases Vol. 74 page 749 wherein it is held:

"There is a basic fundamental difference between a firm and a proprietary concern, where the proprietor and the concern are one and the same for the purposes of Section 141. Where a cheque is issued by the proprietor of a concern, he is the drawer of the cheque, and he alone can be prosecuted. No prosecution is maintainable against the proprietary concern."

11. The learned counsel for the complainant on the other hand justified the impugned order passed by the Revisional Court. He submitted that before arriving at any decision, the scope and object of Section 138 incorporated in the Negotiable Instruments Act will have to be considered. He submitted that Section 138 creates strict liability involving mercantile instrument. He submitted that mere technical approach to the facts of the case would defeat the very object of Section 138. He submitted that in the present case, Maan Agro Centre is the proprietary concern which is having only one proprietor viz. Aminullah Khan. He pointed out that it was Aminullah Khan who drew the cheques in question in favour of the complainant; it was Aminullah Khan who accepted the demand notice on behalf of Maan Agro Centre; it was Aminullah Khan who received the summons; it was Aminullah Khan who appeared before the Court as an accused and took part in the trial. Thus since beginning Aminullah Khan was aware of his own liability. No prejudice is likely to be caused even if his name was not described as the proprietor and the name of the proprietary concern only was mentioned as an accused. In support of this submission, the learned counsel for the complainant relied on the following cases :

i) M/s Dalmia Cement (Bharat) Ltd. v. M/s Galaxy Traders and Agencies Ltd., AIR 2001 SC 676 wherein it is held as under :--

"[The Act](#) was enacted and [Section 138](#) thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instrument is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, in the present day world, are likely to be adversely affected as it is impracticable for the trading community to carry on with it the bulk of the currency in force. The negotiable instruments are in fact the instruments of credit being convertible on account of legality of being negotiated and are easily passable from one hand to another. To achieve the objectives of the Act, the legislature has, in its wisdom thought it proper to make such provisions in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedure in case the obligations under the instruments are not discharged. The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in a smooth and healthy manner, ultimately affecting the economy of the country."

ii) N. Vaidyanathan/Deepika Milk Marketing v. Dodla Daily Limited, 2000 All MR (Cri) Journal 9 wherein it is held as under:

"[Section 138](#) of the Act contemplates that prosecution could be launched against the drawer..... It is a settled position of law that the proprietorship concern by itself is not a legal entity apart from its proprietor, the proprietary concern and the Proprietor are one and the same person. To put it differently, the prosecution against the Proprietrix representing proprietorship concern or proprietorship concern represented by Proprietrix are one and the same as both these things sink, sail and merge with only entity."

iii) M/s [Plywood House v. M/s Wood Craft Products Ltd.](#), 1994 Cri.L.J. 543 wherein it is held that :

"A Court takes cognizance only of the offence and not the offender. Thus, when once cognizance of an offence is taken, subsequent impleadment of any other person as accused would not affect the judicial process adopted in taking cognizance of the offence."

iv) [In Bhim Singh v. Kan Singh](#), 2004 (2) D.C.R. 158 (Rajasthan) a specific question was formulated by the Court as to whether mistakes can be rectified by the subordinates Court or not and while answering this question held as under :--

"It is an established proposition of law that Court of justice must

possess inherent powers apart from the express provisions of law, which are necessary to their existence and the proper discharge of duties imposed upon them by law. The [Criminal Procedure Code](#) or for the matter of that no procedural law is ever exhaustive and in cases where circumstances required it, the Courts have acted on the assumption that they possess inherent powers (as of right) to do justice for which they really exist. At the same time it must be remembered that a Court has no inherent power to do that which is prohibited by [the Code](#).

In this view of the matter every Court whether civil or criminal in the absence of any express provision to the contrary, shall be deemed to possess an inherent in its very constitution, all such powers as are necessary in the course of the administration of justice. The Courts exist for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under [Section 482, Criminal Procedure Code](#) is only in favour of High Courts, the subordinates criminal Courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision provided there is no prohibition and no illegality or miscarriage or justice is involved. Thus all the criminal Courts are having such an ancillary power subject to restriction which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else."

11. From the third judgment in the case of *Amol Shripal Sheth* (Supra) he pointed out the paragraph Nos. 17 wherein this court has held that there is no specific provision dealing with the amendment of the complaint. There is also no provision preventing the court from allowing the amendment in complaint in such a case. Thus, ultimately it is held that no prejudice is caused and when identity is already established is not change such amendment can be allowed. Court also consider in the case that effect of Section 141 of the N. I. Act.

12. From the judgment in the case of *Bhim Singh* (Supra) he pointed out that he relied upon para Nos. 13 and 15

which reads as under:

13. It is an established proposition of law that court of justice must possess inherent powers, apart from the express provisions of law, which are necessary to their existence and the proper discharge of duties imposed upon them by law. The [Criminal Procedure Code](#) or for the matter of that no procedural law is ever exhaustive and in cases where circumstances required it, the courts have acted on the assumption that they possess inherent powers (as of right) to do justice for which they really exist. At the same time it must be remembered that a court has no inherent power to do that which is prohibited by [the Code](#).

15. The Courts exist for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under [Section 432 Cr.P.C.](#) is only in favour of High Courts, the subordinate criminal courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provisions provided there is no prohibition and no illegality or miscarriage of justice is involved.

13. Considering the submission and considering the ratio laid down in the judgments relied upon by the learned advocate for the respondent this court finds that the Sessions Judge, has rightly passed the order dated 08-09-2022 confirming the order dated 05-07-2022 passed in RCC No. 564/2016 below Exh.194 by the learned Chief Judicial Magistrate. This court finds that no ground is made out to cause interference in the case. Thus, the writ petition is dismissed.

[KISHORE C. SANT, J.]