

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Writ Petition No.1388 OF 2016

Shabbir Ibrahim Nadaf
Age-43 years, Occupation-Laborer
R/o-A/P-Vaspeth, Tal-Jath,
Dist-Sangli

...Petitioner
(Orig.Accused)

Versus

1. Mr. Chandrakant Shamrao Mohite
Age:48 years, Occu: Agriculture
R/at: Bichud, Tal-Walwa,
Dist.-Sangli

2. The State of Maharashtra ... Respondent
(Orig.Complainant)

Mr Umesh H. Pawar, Advocate for petitioner.
Mr Anilkumar K. Patil a/w Ms Zeel Jain, Advocate for
respondent No.1.
Smt MH Mhatre, APP for State.

Coram : R. N. Laddha, J.

**Reserved on:1 November 2023.
Pronounced on: 21 December 2023.**

Order :

This writ petition arises out of an order dated 23.2.2016 passed by the learned Magistrate, Islampur, in Summary Criminal Case No.590 of 2011. In this order, the learned

Magistrate allowed the complainant/respondent No.1 to amend his complaint by making correction to the cheque number.

2. The respondent/complainant filed the complaint against the petitioner/accused, alleging that he committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act'). The complaint states that the complainant/respondent presented a cheque to his bank, which was dishonoured due to insufficient funds. A demand notice was sent to the accused, but the accused failed to pay the amount. As a result, the complainant filed a complaint before the learned Judicial Magistrate, First Class, Islampur, bearing SCC No.590 of 2011, against the accused.

3. The learned Counsel for the petitioner submitted that during the course of the hearing, the respondent/complainant examined himself and one witness, namely Uttam More, and closed his evidence. The statement of the accused was also recorded u/s 313 CrPC. Both parties presented their arguments, and on 30.11.2015, the matter was closed for judgment. Subsequently, on 28.12.2015, the complainant filed an amendment application (Exh.81) to correct an error in the complaint and to allow the correct cheque number to be

rewritten. The application stated that it was a typographical mistake and that no prejudice would be caused to the petitioner/accused. After hearing both sides, the learned Magistrate passed an order on 23.2.2016 ('impugned order'), allowing the application and permitting the complainant to carry out the amendment.

4. Mr Umesh Pawar, the learned Counsel for the petitioner/accused, submitted that there is no provision in CrPC to amend the complaint. The complaint mentions cheque number as 64026, which is also mentioned in the statutory notice, affidavit-in-evidence, the plea recorded by the trial Court, statement of the accused recorded u/s 313 CrPC, and written arguments filed on behalf of the complainant. However, the complainant sought permission to correct the cheque number, which was neither mentioned in the complaint nor the notice issued to the accused. Therefore, by allowing the amendment, the trial Court committed an error.

5. The learned Counsel for respondent No.1 supported the impugned order and submitted that there is a typographical error that can be rectified by amending the complaint, and there is no scope for any interference in the impugned order

passed by the trial Court.

6. It is not in dispute that there is no express provision in the CrPC to amend the complaint. By a catena of judicial pronouncements, it is now a settled principle in law that an easily curable legal infirmity can be cured by means of a formal application for amendment. If the amendment sought to be made to a simple infirmity that is curable by means of a formal amendment and by allowing such application, no prejudice would be caused to the other side, and then the Court may permit such an amendment to be made. However, if the amendment sought to be made in the complaint does not relate to a curable infirmity, a formal amendment cannot correct the same, or if there is a likelihood of prejudice to the other side, then the Court shall not allow such amendment.

7. In *SR Sukumar Vs. S.Sunaad Raghuram*¹, the Magistrate, disposed of the amendment application before taking cognizance of the complaint. However, in the present case, after a full-fledged trial when the matter was posted for judgment, the complainant moved an amendment application. As the facts of the aforesaid cited case are distinguishable from the facts of the present case, this decision of the Hon'ble

1 (2015)9 SCC 609.

Supreme Court does not come to the aid of the petitioner/complainant.

8. In the present case, on 28.12.2015, an amendment application was filed to replace the cheque number “64026” with “64028”. The Magistrate allowed the amendment application on the ground that, inadvertently, the incorrect cheque number was mentioned by the complainant. The Magistrate took cognizance in this case, a plea of the accused and evidence of the witnesses were recorded, the statement of the accused u/s 313 CrPC was recorded, the arguments were concluded, and the matter was pending judgment. After that, the complainant has filed the amendment application. The other documents on record, including the statutory notice, do not support this amendment application. If the application were to be accepted, it would cause prejudice to the accused because the complaint, statutory notice, verification statement, and the affidavit of examination-in-chief of the complainant all mention cheque number 64026, which is a crucial aspect of the case. In such a situation, the proposed amendment cannot be said to be formal, simple or curable infirmity. This amendment goes to the root of the case and is substantial.

9. In the circumstances, the learned trial Court, in my considered view, committed an error by allowing the amendment. Given this, the order passed by the trial Court below Exh.81 dated 23.2.2016 in SCC No.590 of 2011 is quashed and set aside. Accordingly, the petition stands allowed. The trial Court is directed to take up the matter and dispose of it in accordance with the law.

[R. N. Laddha, J.]