

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 717 OF 2022

PETITIONER : Mohan S/o. Lahanuji Sakore, Aged about 45 years, Occ: Business, R/o. At Post Kharwadi, Tq. Chandur Bazar, Dist. Amravati.

//VERSUS//

RESPONDENTS : 1. Kalpatru Agencies, Through Proprietor's Power of Attorney Holder- Shri Prakash S/o. Vitthalrao Kaware, Aged about 52 years, Occ: Private Job, R/o. Dahane Nagar, Yashoda Nagar, Main Road, Amravati, Tq. & Dist. Amravati.

Amended as per Hon'ble
Court's Order dt. 12.10.22.

2. Nitin M. Hutke Proprietor Kalpatru Agencies, Aged-Major O/At Dahane, Nagar, Yashoda Nagar, Main Road, Amravati, Tq. & Dist. Amravati.

Mr. J.Y. Ghurde, Advocate for the Petitioner.

Ms. Mohini A. Sharma, Advocate for the Respondents.

CORAM : G. A. SANAP, J.

RESERVED ON : 8th FEBRUARY, 2023.

PRONOUNCED ON : 28th APRIL, 2023

JUDGMENT

Heard.

02] **Rule.** Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties at the admission stage.

03] In this criminal writ petition, challenge is to the judgment and order dated 22nd August, 2022 passed by the learned Additional Sessions Judge, Amravati, whereby the learned Additional Sessions Judge allowed the revision application filed by the complainant and allowed the amendment application made by the complainant in the Court of Judicial Magistrate First Class, Amravati. The learned Judicial Magistrate First Class, Amravati had rejected the application made by the complainant, seeking amendment to the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the N.I. Act” for short).

04] The relevant facts are as follows:

Petitioner is the accused. Complainant is the proprietary concerned represented through its proprietor. In this judgment the parties would be referred by their nomenclature in the complaint. The complainant deals in selling of poultry feed in the name and

style as Kalpatru Agencies. Nitin Madhavrao Hutke is the proprietor. The accused has a friendly relation with him. The accused is having a Boiler Poultry Farm at Kharwadi. As agreed between them, the complainant supplied the poultry feed to the accused on credit basis. The amount of Rs.2,08,515/- was outstanding against the accused. At the request of the complainant instead of making the payment, the accused issued a cheque bearing No.640238 dated 23rd January, 2018 for Rs.2,08,515/- drawn on his account maintained with the State Bank of India, Chandur Bazar Branch, Amravati. On presentation of the cheque, it was dishonoured on the ground that the payment was stopped by the drawer. After issuing the notice, the complainant filed the complaint.

05] The complainant adduced his evidence. After recording the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (Cr.PC), the matter was adjourned for the defence evidence. On the same date, the complainant made an application, seeking amendment to the complaint. According to the complainant, due to oversight, a typographical mistake has occurred while mentioning the amount of cheque as Rs.2,08,575/- instead of Rs.2,08,515. It is also stated that as far as the year of the

transaction is concerned, a mistake has occurred in the complaint. The year of transaction was 2016, however, it was mentioned as 2017. It is submitted that this amendment was necessary. The amendment was not intended to change the nature of the complaint. The amendment according to the complainant was just to rectify the curable infirmity or defect. According to him, no prejudice would be caused to the accused, because the accused has admitted almost all the facts.

06] The accused opposed the application. According to the accused, there is no provision in the Cr.PC for amendment of the complaint. The amendment sought for was intended to fill up the lacuna left in the case of the complainant. A right has accrued in favour of the accused. The amendment was substantial in nature and as such would cause prejudice to the accused.

07] The learned Magistrate, on going through the record and proceedings, found that the amendment was intended to fill up the lacuna and therefore, the learned Magistrate rejected the amendment application.

08] The learned Additional Sessions Judge, in the revision filed by the complainant, did not agree with the learned Magistrate

and as such set aside the order of the learned Magistrate and allowed the amendment application. The accused is before this Court against the said order.

09] I have heard Mr. J.Y. Ghurde, learned advocate for the petitioner/accused and Ms. Mohini A. Sharma, learned advocate for the respondents/complainant. Perused the record and proceedings.

10] Learned advocate for the accused submitted that the amendment sought to be made by the complainant does not relate to a simple infirmity. Learned advocate pointed out that the complainant in his evidence has categorically admitted that the year of the transaction was 2016, whereas in his pleading he has stated that the year of transaction was 2017. Learned advocate further submitted that the amount mentioned in the cheque and the one mentioned in the notice and the complaint is different. Learned advocate submitted that this application was made at a belated stage. The application was hit by delay and laches. Learned advocate further submitted that the amendment sought to be made was a substantial amendment to fill up the lacuna, which would definitely cause prejudice to the accused in his defence. Learned

advocate, therefore, submitted that the order passed by the learned Additional Sessions Judge, is required to be quashed and set aside. In support of his submission, he has placed reliance on the decision in the case of *S.R. Sukumar Vs. S. Sunaad Raghuram [(2015) 9 SCC 609]*.

11] Learned advocate for the complainant, placing reliance on the judgment in the case of *S.R. Sukumar* (supra), submitted that it supports the case of the complainant and not the case of the accused. Learned advocate submitted that in the totality of the undisputed facts and circumstances, the amendment was not intended to fill up the lacuna. It is submitted that it was intended to correct the typographical mistake and error occurred, while drafting the complaint. Learned advocate submitted that it was a curable infirmity or defect, which can be corrected by a formal amendment. Learned advocate submitted that in the case of *S.R. Sukumar* (supra), the Hon'ble Apex Court has held that even though there is no specific provision in the Cr.PC to amend either the complaint or petition filed under the provisions of the Cr.PC, the Court can allow a formal amendment to correct the curable infirmity or defect in the proceeding. Learned advocate further submitted that the accused has admitted the transaction between

him and the complainant. He has also admitted the issuance of cheque. It is further submitted that in his reply to the notice issued by the complainant, he has admitted that transaction was of the year 2016. Learned advocate submitted that the learned Additional Sessions Judge has taken all these facts into consideration, while considering the revision application.

12] In order to appreciate the rival submissions, I have gone through the record and proceedings. At the outset, it would be necessary to consider the law laid down in the case of **S.R. Sukumar** (supra). The Hon'ble Apex Court in this case has considered its earlier decision in the case of **U.P. Pollution Control Board Vs. Modi Distilleries and others [(1987) 3 SCC 684]**. In this case, the Hon'ble Apex Court has held that if the amendment sought to be made relates to simple infirmity, which is curable by means of formal amendment and by granting such an amendment, no prejudice is likely to be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. It is further held that if the amendment sought to be made in the complaint does not relate either to a curable infirmity which can be corrected by a formal

amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow the amendment in the complaint. It is further pertinent to note that in this case, the Hon'ble Supreme Court granted amendment despite making a note that the amendment sought to be made in the complaint was not of a formal in nature, but a substantial amendment. It is further seen on perusal of this judgment that in the case before the Hon'ble Supreme Court, the amendment application was made before taking cognizance and issuance of process.

13] In order to consider the applicability of this settled legal position to the facts of the case, it would be necessary to advert to the facts of the case. It is to be noted that during the course of cross-examination, certain questions were asked to the witness. It is stated that on the basis of the answers given by the witness, the mistake in mentioning the amount of the cheque was realised. In the cheque, the amount in figures was mentioned as "208575", however in words, it was written as "two lac eight thousand five hundred fifteen only". It is, therefore, apparent that a mistake appears to be *bona fide*. The accused has admitted his signature on the cheque. He has also admitted that the cheque in question was issued as a security. It is his case that it was a blank cheque, but it

was misused in the year 2018 by the complainant. In his reply to the notice, he has stated that in the month April-May, 2016, the accused had purchased poultry feed from the accused for his poultry farm. He has further stated that the poultry feed supplied by the complainant was of inferior quality and therefore, it was sent for analysis. The report of analysis clearly mentions that the quality of the feed was poor. It is, therefore, his case that there was a dispute on that count and therefore, the complainant was not entitled to get the money for such a poor quality feed. This is the sum and substance of his defence.

14] It appears on perusal of his defence reflected in the notice that he is not disputing the nature of the transaction between him and the complainant. He is also not disputing the year of the transaction. It is not his case that the transaction took place in the year 2017. It is seen on perusal of the cheque that in words, the amount has been correctly written, however, in the figure a mistake has occurred. It is apparent that in place of digit “1”, digit “7” has been written.

15] In this context, it would be necessary to consider the provisions of Section 18 of the N.I. Act. As per this section, it is

provided that if the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. In this case, the amount of cheque written in words is correct. There is a mistake of one digit while writing the amount in figures. The year of the transaction has been stated in the reply by the accused as 2016.

16] In the above background, the question that needs to be addressed is whether this amendment is a formal in nature or intended to change the core and crux of the case of the complainant. On appreciation of the rival submissions and on going through the proposed amendment, I am convinced that it relates to a simple infirmity. It is seen that due to oversight, the mistake had occurred in mentioning the figure of the cheque as well as the year of the transaction. The defect sought to be corrected in the facts and circumstances has to be held as a curable infirmity or defect.

17] The next important aspect that needs to be addressed is the likely prejudice to the accused by granting this amendment. In my view, in the backdrop of the abovestated observation, touching

the facts, no prejudice will be caused to the accused by granting the amendment. The accused has admitted the year of the transaction. According to the complainant, a typographical mistake has occurred while mentioning the year as 2017 instead of 2016. In this case also there is a mistake while mentioning one digit instead of “6”, it is mentioned as “7”. It is true that in the cross-examination, certain admissions have been given by the complainant.

18] On consideration of the material on record, I am of the view that the admissions given in the cross-examination would still be available to the accused to substantiate his defence. However, it cannot be done in isolation. He will be entitled to make use of it in the totality of the facts, circumstances and evidence brought on record. As such, the permission to amend the curable infirmity or defect will not cause any prejudice to the accused. The accused will get a right to recall the witness for further cross-examination to deal with the facts corrected pursuant to the amendment. Similarly, he will get an opportunity to lead his evidence in rebuttal. This right of the accused cannot be diluted. In view of this right of the accused, it cannot be said that the accused would be prejudiced in his defence. The decision in the case of *S.R. Sukumar* (supra)

would, therefore, be applicable to this case to substantiate the case of the complainant and not of the accused. Accordingly, the petition is **dismissed**. Rule stands discharged.

(G. A. SANAP, J.)

Vijay