

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-1047-2019 (O&M)
DATE OF DECISION: 17th JULY, 2023

Surender Kumar Maini

.... Petitioner

Versus

International Recreation and Amusement Ltd. and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr.Rakesh Dhiman, Advocate
for the petitioner.

Mr. Lajpat Rai Sharma, Advocate,
for respondent no.3.

None for respondents no.1, 2 and 4.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed by the petitioner seeking quashing of the impugned order dated 18.12.2018 (Annexure P/12) passed by the trial Court in Case No.2222/RBT/09.02.2017, titled as “Surinder Paul Maini vs. International Recreation and Amusement Ltd.& others” and for directing the trial Court to allow his application to rectify the error/mistake in the summoning order dated 22.02.2017 (Annexure P/4) and in notice of accusation dated 25.08.2017 (Annexure P-5).

2. It is submitted by learned counsel for the petitioner that the application moved by the petitioner for correction of the typographical mistake in summoning order and the notice of accusation has been

illegally and unlawfully declined by the trial Court. Further; he submits that the petitioner/complainant issued legal notice regarding the non-payment of the cheques bearing No.004579 dated 25.10.2016 and 004580 dated 25.11.2016. However, the trial Court summoned the accused and issued notice of accusation only qua cheque bearing No.004580 dated 25.11.2016 amounting to Rs.3,50,000/-. This was a typographical error and the same could not occur even to the petitioner/complainant when he was leading the evidence. Subsequently, when the same came to notice of the petitioner/complainant, immediately an application was moved for correction of the typographical mistake and for inclusion of the cheque No. 004579, dated 25.10.2016 in the summoning order and the notice of accusation, as well. However, the said application has been wrongly rejected by the trial Court. Hence, the order passed by the trial Court deserves to be set aside and a direction deserves to be issued to the Court below to correct the summoning order and the notice of accusation accordingly. Counsel for the petitioner has also referred to a judgment of a co-ordinate Bench of this Court in **“Indiabulls Housing Finance Ltd.vs. Narula Electricals and others”** (Criminal Misc.No.M-32591 of 2018, decided on 24.09.2018)

3. On the other hand, learned counsel for respondent no.3 submits that there is no illegality in the order passed by the trial Court. The alleged mistake in the order is not a typographical error. The summoning order was passed regarding one particular cheque only. The entire trial has been carried out qua one cheque only. Even the cross-examination of the witnesses was conducted by the respondent-accused keeping in mind only one cheque qua which the notice of accusation was

served upon respondent no.3. Therefore, at this stage end of the trial, the trial Court could not have modified the notice of accusation and thereby permitted the petitioner/ complainant to fill up the lacuna. Counsel for respondent no.3 has further submitted that the proceedings under Section 138 of the Negotiable Instruments Act, 1881 are, in fact, not the recovery proceedings. Even if there is trial for one cheque, it would not make any difference to the case of prosecution; because if proved in accordance with law, respondent no.3 could be punished even for one cheque. So far as, the amendment of summoning order and notice of accusation is concerned, the petitioner could have availed his remedies at the relevant time by challenging the order passed by the trial Court, but no such step was taken by the petitioner. Even now, the petitioner has not challenged the original summoning order and the notice of accusation, rather, to introduce charge qua another cheque in a surreptitious manner; the petitioner has filed application for correction of alleged typographical mistake. Since, it was not a typographical mistake, therefore, the Court below has rightly rejected the application.

4. Having heard the counsel for the parties, this Court does not find any substance in the argument raised by counsel for the petitioner.

5. It is not even in dispute that the complaint having been filed by the petitioner, the summoning order was passed by the trial Court qua one cheque bearing No.004580 dated 25.11.2016 only. The summoning order and the notice of accusation both are unambiguous in that regard. The petitioner never challenged the said order at the relevant time. Thereafter the entire trial has been conducted keeping in view the perspective only of the cheque No.004580 dated 25.11.2016 by both the

parties. Therefore, it cannot be said that the alleged deficiency in the summoning order and notice of accusation is only a typographical mistake. The petitioner may have been entitled to assert the summoning order and the notice of accusation to have been defective and the petitioner was at liberty to challenge the said orders at the relevant time, however, the petitioner never challenged the same. Even till today those orders are not under challenge before this Court as such.

6. There is another reason why the prayer of the petitioner cannot be allowed at this stage. As mentioned above, the entire trial so far has been conducted in the perspective of one cheque bearing No.004580 dated 25.11.2016. Although the petitioner might have mentioned both the cheques even in his statement made before the Court, however, the respondent no.3 being an accused in the case, had a right to remain silent in the trial or to choose the type and the degree of cross-examination of the complainant/witnesses. He has exercised his rights keeping in view one cheque only. Therefore, respondent no.3/accused cannot; now; be put to prejudice by permitting the alleged correction in the summoning order and the notice of accusation. In fact; it is not a correction; as such. If this course of action is permitted then the entire evidence led in the trial so far has to be washed out and the trial has to be started afresh as if it was a starting point of the case. However, it would not even be prudent to permit the trial to restart afresh after about 7 years of the incident and even after 5 years of the passing of the order by the trial Court.

7. Another attempt and assertion of the counsel for the petitioner is that the petitioner has mentioned both the cheques and if

allowed, the Court could have granted compensation equivalent to the amount of the cheque at the time of final decision of the case, if accused was convicted. The respondent no.3/accused has compromised the matter qua all other cheques except the present one. If prosecution qua this cheque is started the accused would pay up the amount of this cheque as well. However, this Court finds substance in the argument raised by counsel for respondent no.3 that the proceeding under Section 138 of the Negotiable Instruments Act, 1881, are not in the nature of recovery proceedings. Qua recovery of the dues, if any, the petitioner had every right to file a civil suit, to prove the same in accordance with law and to recover the amount; if any, with the necessary costs etc. Therefore, even this cannot be the relevant factor for permitting amendment of the summoning order at this stage.

8. So far as the judgment cited by the counsel for the petitioner is concerned, this Court finds that in the said judgment the aspect of the prosecution evidence led, regarding which the accused has got some of rights to defend himself; has not been appreciated. It is not clear from the said judgment as to at what stage the trial had reached in that case. Therefore, this judgment is of no help to the case of the petitioner. Moreover, the said judgment has treated the amendment of the notice of accusation and the summoning order only as a typographical mistake. However, as observed above, the amendment of the summoning order and notice of accusation is not in the nature of correction of the typographical error. Therefore, despite due deference to the said judgment, this Court does not find itself in agreement with the abovesaid judgment.

9. In view of the above, this Court finds no merit in this petition, which is consequently, dismissed.
10. All the pending applications, if any, are also disposed of as such.

17th JULY, 2023(RAJBIR SEHRAWAT)
'dharamvir'JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No