

CRM-M-32545-2018
CRM-M-32485-2018

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-32545-2018 (O&M)
Date of decision: 10.01.2023

GURNAM SINGH

....Petitioner(s)

Versus

BITTU SINGH

...Respondent(s)

CRM-M-32485-2018 (O&M)

GURNAM SINGH

....Petitioner(s)

Versus

BITTU SINGH

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Achin Gupta, Advocate
for the petitioner.

Mr. Sukhmeet Singh, Advocate
for the respondent.

AMAN CHAUDHARY. J.

This order shall dispose of the above-mentioned petitions relating to the same parties and arising out of the same complaint filed under Section 138 of the Negotiable Instruments Act (for short 'NI Act').

Present petitions have been filed for quashing the orders dated 02.02.2017, Annexure P-9, in CRM-M-32485-2018 and 20.12.2017, Annexure P-9, in CRM-M-32545-2018 passed by Judicial Magistrate Ist Class, Faridkot, whereby the application under Section 311 CrPC and

application to allow to rectify/correct the cheque number in the complaint were dismissed and order dated 20.07.2018, Annexure P-10 passed by learned Additional Sessions Judge, Faridkot, whereby the revision petition filed by the petitioner against order dated 02.02.2017, P-9, was also dismissed.

Succinctly, the facts of the case are that Bikker Singh, who is father of the respondent had borrowed Rs.2,50,000/- from the petitioner on interest @2% per month and executed a pronote and receipt in favour of the petitioner. Thereafter, since 2014, the petitioner was demanding the money but he was putting off the matter on one pretext or the other and ultimately on 15.9.2014, the petitioner served a legal notice upon Bikker Singh and after receiving the said legal notice, Bikker Singh along with the respondent approached the petitioner and agreed to pay the borrowed money along with 1½ % interest per month. Accordingly, on 13.12.2014, Bikker Singh along with respondent came to the petitioner and in discharge of liability of Bikker Singh, his son i.e. respondent issued cheque No.022951 dated 13.12.2014 amounting to Rs. 3,32,500/- in favour of petitioner as final settlement of liability of Bikker Singh. The said cheque was drawn on Axis Bank, Faridkot relating to Bank Account No. 417010100097866 of the respondent. On 16.12.2014, the petitioner presented the abovesaid cheque for clearing through his Banker HDFC Bank, Faridkot but the same was returned dishonoured on 18.12.2014 to the complainant-petitioner by his banker along with Memo dated 16.12.2014 of Axis Bank, Faridkot with remarks 'Account closed'. The petitioner served another legal notice dated 19.12.2014 upon

respondent and Bikker Singh requesting them to pay cheque money within 15 days, however, they refused to pay the cheque amount and as such, on 07.01.2015, the petitioner filed complaint under Section 138 of Negotiable Instruments Act against the respondent and Bikker Singh for the dishonor cheque, however, Bikker Singh was discharged and trial is going against only the respondent.

Learned counsel for the petitioner contends that in the cheque, return memo and the notice of demand the correct cheque number was mentioned, however in the complaint filed by the petitioner, the cheque No. 022951 was inadvertently and mistakenly typed as 222951. Thereafter, on 12.01.2016, the learned Trial Court served the respondent with notice of accusation wherein also the correct cheque number was mentioned. In the statement of the respondent under Section 313 Cr.P.C. recorded on 26.10.2016 the question contained the correct cheque number 022951.

In the affidavit tendered by the complainant, in examination-in-chief and in the complaint the cheque number was wrongly mentioned as 222951 instead of 022951, due to typographical mistake, which came to notice of the complainant at the time of his cross-examination.

The petitioner filed application under Section 311 Cr.P.C. to allow the petitioner to re-examine himself as a witness by tendering additional correct affidavit in his evidence as also the application to allow him to rectify/correct the cheque number, which were dismissed by the trial Court on 02.02.2017 and 20.12.2017. Consequently, revision filed against

the order dated 02.02.2017, was also dismissed by the Additional Sessions Judge, Faridkot vide order dated 20.7.2018.

Learned counsel for the petitioner-complainant submits that the learned Courts below have failed to appreciate the material fact that cheque number was inadvertently typed as 222951 instead of 022951 in the complaint as well as in the evidence affidavit of the petitioner. He submits that a perusal of the cheque, Annexure P-1, Legal Notice, Annexure P-3 reveals that the cheque number was rightly mentioned as 022951 and even in the memo, Annexure P-2, the cheque number is also rightly mentioned as 022951 by the Bank. He further submits that the perusal of the notice of accusation, Annexure P-5, statement under Section 313 CrPC of respondent, Annexure P-7 reveals that the trial Court has also mentioned the cheque number to be 022951, which makes it clear that the cheque number 022951 was rightly mentioned on each and every document except complaint and evidence affidavit of the complainant, which is clearly a typographical error.

It was next contended that the accused-respondent never disputed that the cheque in question did not belong to him. He prays an opportunity to rectify the error in the complaint and the affidavit.

Learned counsel for the accused-respondent opposes the present petitions and submits that the applications have been rightly dismissed as they were filed at a belated stage and to fill up lacuna. The orders passed by the Courts below being reasoned are legal and valid, thus the present petitions are liable to be dismissed.

Heard.

The admitted factual position as emanates is that; the cheque dated 13.12.2014, Annexure P-1 bears the number 022951. The said number is contained in the return memo dated 16.12.2014, Annexure P-2, issued by Axis Bank Ltd.; the legal notice dated 19.12.2022, Annexure P-3; the notice of accusation dated 12.01.2016, Annexure P-5 and in the statement under Section 313 CrPC dated 26.10.2016, Annexure P-7.

Contextually, it is expedient to refer Section 311 Cr.P.C., that reads thus:-

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

In the case of **P. Chhaganlal Daga vs M. Sanjay Shaw**, (2003) 11 SCC 486, a complaint was filed under Section 138 of NI Act, wherein after completion of evidence, including examination, cross-examination and re-examination, the respondent-accused raised a question regarding service of notice, the acknowledgment card produced by the complainant contained a signature which the accused disowned as his. When the said case was posted for judgment, after the conclusion of arguments, the complainant filed an application under Section 311 Cr.PC for producing a postal receipt, which was allowed by the trial Court, but the said order was set aside by the

High Court, being impermissible in law, on finding its production at the said belated stage only "to fill up the lacuna". However, Hon'ble The Supreme Court of India while relying on the law laid down in **Mohanlal Shamji Soni vs. Union of India** (1991) Suppl. 1 SCC 271 and **Rajendra Prasad** (supra) held that as under Section 311 Cr.PC widest range of power has been conferred on the court and the only factor governing the court should be whether such material is essential for the just decision of the case, set aside the order of the High Court. In the present case, the Courts below should have indeed taken a holistic view of the matter, in light of the law laid down and the fact that when all other documents i.e. the cheque in question, return memo, notice of demand, notice of accusation contained the correct cheque number, the complainant could not be said to be filling up the lacuna.

Hon'ble The Supreme Court of India in the case of **Rajendra Prasad vs. Narcotic Cell** (1999) 6 SCC 110 held that, "The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone." Similarly a wrong cheque number got mentioned in the complaint and the affidavit due to typographical mistake, which when came to be noticed, led to filing of the application for rectification/ correction therein and it was not a case set up by the accused-respondent that complainant was otherwise not diligent in pursuing his case or in producing all other documents giving correct cheque number.

The Courts below were also required to keep in mind that the object underlying Section 311 CrPC was to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or

leaving an ambiguity in the statements of the witnesses as was held in the case of **Hanuman Ram v. The State of Rajasthan &Ors.**, 2008(4) RCR (Criminal) 823, by Hon'ble The Supreme Court of India.

The law as enunciated being that the power under Section 311 of Cr.P.C. can be exercised at any stage of the proceedings for the just decision of the case. The Court is to ensure that there is no miscarriage of justice.

The prosecution and trial against the accused cannot be allowed to be defeated merely because of a technical and curable defect in the complaint as has been held by Hon'ble The Supreme Court of India in **U.P. Pollution Control Board v. Modi Distilleries**, (1987) 3 SCC 684. Further that curable infirmities and those which do not change the original nature of the complaint can be permitted to be carried out by way of amendment and no prejudice could be caused to the other side was held in **S.R.Sukumar v. S. Sunaad Raghurav**, (2015) 9 SCC 609.

The issue as in the present case seeking to rectify the mistake of mentioning the wrong cheque number in the complaint was also involved in the case of **Bhim Singh v. Kan Singh**, (2004) 2 RCR (Cri) 22, wherein wrong cheque number and date of cheque was mentioned in the complaint. After concluding that the mistake was typographical in nature, the order of the trial Court was set aside by the Rajasthan High Court and the amendment was permitted. The said decision was followed by the Bombay High Court in the case of **Balasaheb Vs Abdulla**, 2006(2) Cri.LJ 365, involving similar facts and the amendment sought for, was permitted.

It is explicit that the Court would always have the jurisdiction to look into the fact and do complete justice in the matter so far as wrong mentioning of the cheque number either in the notice or in the complaint is concerned as was aptly held by the Madhya Pradesh High Court in the case of **Pradeep Premchandani v. Smt. Neeta Jain**, rendered in M.Cr.C.No. 2907/2007, decided on 18.9.2008.

The pivotal fact in the present case was that in the cheque, return memo, notice of demand and notice of accusation the correct cheque number was mentioned and the mistake was detected by the complainant at the time of his cross-examination, as was the case in **Oswal Finlease Private Limited Vs State of Rajasthan and another** (2014) 3 RCR (Civil) 805, wherein also wrong cheque number had been mentioned in the complaint and affidavit and it was observed by the Rajasthan High Court, that at the same time it was also true that impugned cheque, return memo from bank and notice which were presented along the complaint bear the correct cheque number. It was when the complainant was cross examined, the mistake came to his notice and an application for the rectification was moved. It was held that no person could be penalized for his bonafide mistake. Petitioner was allowed to make necessary amendments in the complaint about the details of bounced cheque and also allowed to file a fresh affidavit in support of his complaint and the respondent was left free to cross examine on the same.

As observed above, though the original cheque and the return memo were on record but still the prayer of the complainant-petitioner was rejected on the ground of it being made at a belated stage and would cause

prejudice to the accused-respondent. In a similar situation, this Court in the case of **Rakesh Bansal Vs Narinder Kumar Sharma**, (2019) 4 RCR (Cri) 672 wherein it was at the time of examination of the accused under Section 313 Cr.PC that it came to the notice of the complainant-petitioner that the cheque number had been wrongly mentioned in the complaint as '173540' instead of '173543'. This Court set aside the impugned order passed by the trial Court, declining the amendment and observed that since the original cheque and the dishonoured memo were on record, it can not be said that by amending the complaint any prejudice would be caused to the accused-respondent. The petitioner was permitted to amend the complaint in accordance with his application.

A fortiori, the Court being vested with broad and wholesome power under Section 311 CrPC, exercisable at any stage of the proceedings, for the just decision of the case, the object of which is to mete out the justice and not a bout over technicalities.

Not only was the application filed by the petitioner under Section 311 Cr.PC for permission to re-examine himself as witness and produce additional affidavit wrongly dismissed but even the subsequent application filed for correction/rectification of a typographical mistake in the complaint, was dismissed on a mere *ipse dixit* of aforesaid application having been dismissed. Thus, this Court, must hasten to hold that the Courts below have erred in that regard.

An inadvertent typographical mistake, instead of 022951, the cheque number was mentioned as 222951, one digit being at variance, in the

complaint and the affidavit, whereas in all other documents already on record i.e. the cheque in question, return memo, legal notice of demand, notice of accusation and question framed and put to the accused under Section 313 CrPC., the correct cheque number 022951, is mentioned, the same could not have caused any prejudice to the accused-respondent by permitting amendment of the complaint and furnishing of additional affidavit to the aforesaid extent, as every Court whether civil or criminal possesses inherent power to do right and to undo a wrong in course of administration of justice as held by Hon'ble The Supreme Court in the case of **State of M.P. v. Awadh Kishore Gupta**, 2004 (2) JLJ 234.

While exercising power under Section 482 CrPC the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice as held by Hon'ble The Supreme Court of India, in the case of **Palanitkar and others vs. State of Bihar and another** AIR 2001 SC 2960.

Taking into consideration the exposition of law, peculiarity of the case at hand and to secure ends of justice, this Court is of the firm view that the orders impugned are *ex facie* erroneous and thus, deserve to be set aside. As a corollary thereto, the petitioner is held entitled to grant of permission to amend the complaint as also furnish an affidavit, as prayed for.

Accordingly, both the petitions are hereby allowed. The impugned orders are set aside by allowing the prayer made in the

applications. The accused-respondent be also granted the opportunity to cross-examine the complainant-petitioner.

No observation made hereinabove be construed as an expression of opinion on the merits of the case in any manner, as the same are only meant for the purpose of adjudication of the present case.

A photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

January 10, 2023
S.Sharma/GSV

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No