

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

CRM-M-37796-2018 (O&M)

Reserved on 12.12.2022

Date of Decision: 04.01.2023

M/S MITTAL TRADING COMPANY Petitioner

Versus

MUNISH KUMAR GUPTA Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Nakul Sharma, Advocate for the petitioner.

Mr. P.S. Ahluwalia, Advocate for the respondent.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 482 Cr.P.C. is seeking quashing of order dated 13.07.2018 (Annexure P-1) whereby learned Judicial Magistrate 1st Class, Amloh has declined the request of the petitioner to amend complaint bearing No.1 dated 02.01.2013.

2. The petitioner filed a complaint in terms of Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') read with Section 420 IPC alleging that respondent was working with petitioner as DSE. The respondent with a view to discharge its financial liability issued an account payee cheque No.732966 dated 22.07.2012. The cheque was presented by the petitioner which came to be returned on account of "insufficient balance". The petitioner served legal notice upon the respondent which was followed by afore-stated complaint under Section 138 of NI Act read with Section 420 IPC. In the complaint, the date of cheque was mentioned as 22.07.2010 whereas as per the petitioner, the correct date of cheque is 22.07.2012. The petitioner moved an application seeking amendment of the complaint. Learned Magistrate vide impugned order

dated 13.07.2018 has dismissed the application of the petitioner on the ground that there is same averments qua date of cheque in different documents including preliminary evidence tendered by the complainant. The typographical mistake can occur once and not repeatedly in all the documents. The cross-examination of the complainant had already concluded, thus, the complainant cannot be allowed to fill up the lacuna that has come in his notice at this belated stage.

3. Learned counsel for the petitioner in support of his contention that amendment of complaint is permissible cited judgment of Bombay High Court in *Anand Vs. Step in Computer shopee and another 2014(3)RCR (Criminal) 597*, Rajasthan High Court in *Bhim Singh Vs. Kan Singh 2004 (2) RCR (Criminal) 22*, this Court in *Bedi sons Steels & Wires Vs. M/s B.G. Brothers 2002 (2) RCR (Criminal) 45* and Madhya Pradesh High Court in *Pandi Gorelal and another Vs Rahul Punjabi 2011 (2) RCR (Criminal) 882*.

4. Learned counsel for the respondent submits that it is no longer *res integra* that amendment of complaint is permissible, however, court can permit amendment in the facts and circumstances of each case. In the case in hand, the complaint was filed in 2013. The preliminary evidence was recorded on 11.07.2013 and thereafter examination-in-chief of petitioner took place on 17.12.2013. The alleged mistake is not only in the complaint but it is in the affidavit of the complainant/petitioner, notice of accusation and legal notice served by the petitioner. The amendment would amount to filling up lacuna and at a belated stage which cannot be permissible in law.

5. In support of his contention, learned counsel for the

respondent cited judgment of this Court in *Kumar Rubber Industries, Kapurthala Vs. Sohan Lal 2002 (2) RCR (Criminal) 111*, Bombay High Court in *Neeraj Cement Structural Pvt. Ltd & Anr. Vs. Bombay J.C.B. Earth Movers & Anr 2008 (16) RCR (Criminal) 719* and Madhya Pradesh High Court in *Sunderdev Vs. Yogesh 2008 (24) RCR (Criminal) 101*.

6. I have heard the arguments of both sides and with the able assistance of counsel scrutinized the record.

7. From the pleadings and arguments of learned counsel of both sides, questions arising for the adjudication by this court are:

i) Whether in view of the facts amendment of the complaint filed under Section 138 of NI Act was permissible?

ii) Whether trial court has power to permit amendment of complaint?

8. In view of statement of Ld. Counsel for the respondent, there is no need to advert with second issue. Thus, it is undisputed that trial court even though there is no specific provision in Cr.P.C. yet has power to permit amendment of complaint.

9. There are more than one provisions of Cr.P.C. which permit amendment. Section 216 permits addition or alteration of charge prior to pronouncement of judgment. Section 311 permits summoning of any person as well recalling or re-examining of any person already examined. Section 319 permits court to proceed against any person who appears to be guilty during the course of trial. Section 391 endows power upon appellate court to take additional evidence. Sections 216, 311, 319 and 391 read as:

216. *Court may alter charge.*

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

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.

319. Power to proceed against other persons appearing to be guilty of offence.—

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

391. Appellate Court may take further evidence or direct it to be taken.— *(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks*

additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

From the conspectus of above quoted sections, it can be gleaned that intent of all the above quoted Sections is to uphold the majesty of justice and secure the ends of justice. Neither innocent person should be punished nor culprit should be let scoot free on the technical grounds. The procedure cannot be mistress of justice but it is made to assist and achieve the intent of substantive law.

10. A Constitution bench of the Supreme Court ***Union of India v. Tulsiram Patel, (1985) 3 SCC 398*** while dealing with omission to mention the relevant clause of the second proviso or the relevant service rules in the impugned order has held that order cannot be invalidated if power exists and wrong provision is invoked. Hon'ble Court has held:

125. Some of the orders impugned before us refer only to one or the other of the three clauses of the second proviso to Article 311(2) for dispensing with

an inquiry without referring to the relevant service rule, some refer both to a clause of the second proviso and the relevant service rule, while the others refer only to the relevant service rule without making any mention of the particular clause of the second proviso which has been applied. The question is whether the omission to mention the particular clause of the second proviso or the relevant service rule makes any difference.

126. *As pointed out earlier, the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules while the source of his power to dispense with the disciplinary inquiry is derived from the second proviso to Article 311(2). There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. The Court's attention in Challappan case [(1976) 3 SCC 190 : 1976 SCC (L&S) 398 : (1976) 1 SCR 783] was not drawn to this settled position in law and hence the error committed by it in considering Rule 14 of the Railway Servants Rules by itself and without taking into account the second proviso to Article 311(2). It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions,*

whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. (See Dr Ram Manohar Lohia v. State of Bihar [AIR 1966 SC 740 : (1966) 1 SCR 709, 721 : 1966 Cri LJ 608] and Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal [(1983) 2 SCC 422 : (1983) 2 SCR 676, 681] .) The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders must be read as having been made under the applicable clause of the second proviso to Article 311(2) read with the relevant service rule. It may be mentioned that in none of the matters before us has it been contended that the disciplinary authority which passed the impugned order was not competent to do so.

11. Case in hand relates to proceedings under Section 138 of NI Act, 1881. The proceedings under Section 138 of NI Act are quasi criminal in nature and intent is to recover cheque amount by way of summary proceedings. Hon'ble Supreme Court in many cases has adverted with nature of proceedings under Section 138 of NI Act.

11.1 A two judge bench of Hon'ble Supreme Court in **Lafarge Aggregates & Concrete (India) (P) Ltd. v. Sukarsh Azad (2014) 13 SCC 779**, dealt with an order where High Court had ex-parte set aside complaint filed under Section 138 of NI Act on the ground that accused

offered to pay cheque amount, however, complaint refused to accept and insisted for pursuing the trial. The Apex Court describing the hybrid nature of provisions of NI Act has held:

“6. The respondents have agreed to pay the said amount but the appellant has refused to accept the payment and insisted that the appeal against rejection of the recall application should be allowed by this Court. The counsel for the appellant submitted that merely because the accused has offered to make the payment at a later stage, the same cannot compel the complainant appellant to accept it and the complainant appellant would be justified in pursuing the complaint which was lodged under the Negotiable Instruments Act, 1881. In support of his submission, the counsel for the appellant also relied on Rajneesh Aggarwal v. Amit J. Bhalla [Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631 : 2001 SCC (Cri) 229] . [The judgment in Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631 : 2001 SCC (Cri) 229 was delivered prior to the 2002 and 2018 Amendment Acts to the Negotiable Instruments Act. The perceptible shift in the provisions by introducing Sections 143 to 148 has been noticed by this Court hereinabove, as a result of which the observations contained in this judgment would no longer be valid.]

7. However, we do not feel persuaded to accept this submission as the appellant has to apprise himself that the primary object and reason of the Negotiable Instruments Act, 1881, is not merely penal in nature but is to maintain the efficiency and value of a negotiable instrument by making the accused honour the negotiable instrument and paying the amount for which the instrument had been executed.

8. *The object of bringing Sections 138 to 142 of the Negotiable Instruments Act on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments. Despite several remedies, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Therefore, once a cheque is drawn by a person of an account maintained by him for payment of any amount or discharge of liability or debt or is returned by a bank with endorsement like : (i) refer to drawer, (ii) exceeds arrangements, and (iii) instruction for stop payment and like other usual endorsement, it amounts to dishonour within the meaning of Section 138 of the Act. Therefore, even after issuance of notice if the payee or holder does not make the payment within the stipulated period, the statutory presumption would be of dishonest intention exposing to criminal liability.*

10. *However, in the interest of equity, justice and fair play, we deem it appropriate to direct the respondents to make the payment to the appellant by issuing a demand draft in their favour for a sum of Rs 5 lakhs, which would be treated as an overall amount including interest and compensation towards the cheque for which stop-payment instructions had been issued. If the same is not acceptable to the appellant, it is their choice but that would not allow them to prosecute the respondents herein in pursuance to the complaint which they have lodged implicating these two respondents.”*

11.2 A two judge bench of Apex Court while dealing with a case where High Court dismissed petition on the ground that complainant is not ready to settle the matter though accused was ready to pay cheque amount in **Meters & Instruments (P) Ltd.v.Kanchan Mehta (2018) 1 SCC 560**, noticed object of Section 138 and the amendments made to Chapter XVII. The Apex Court has held that court can close the trial and further summarised the case law as follows:

“7. This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the payee and credibility of business transactions suffers a setback. Goa Plast (P) Ltd.v.Chico Ursula D'Souza, (2004) 2 SCC 235. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 Amendment specifically made it compoundable. Vinay Devanna Nayakv.Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305. The offence was also described as “regulatory offence”. The burden of proof was on the accused in view of presumption under Section 139 and the standard of proof was of “preponderance of probabilities”. Rangappav.Sri Mohan, (2010) 11 SCC 441. The object of the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the amount of cheque by way of compensation. Though proceedings under Section 138 could not be treated as civil suits for recovery, the scheme of the provision, providing for punishment

with imprisonment or with fine which could extend to twice the amount of the cheque or to both, made the intention of law clear. The complainant could be given not only the cheque amount but double the amount so as to cover interest and costs. Section 357 (1)(b) CrPC provides for payment of compensation for the loss caused by the offence out of the fine. [R. Vijayanv.Baby, (2012) 1 SCC 260 at p. 264, para 9 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520] Where fine is not imposed, compensation can be awarded under Section 357(3) CrPC to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments.

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18. From the above discussion the following aspects emerge:

18.1. Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element,

compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

18.4. Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the court has jurisdiction under Section 357(3) CrPC to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases.

18.5. Since evidence of the complaint can be given on affidavit, subject to the court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonour of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 CrPC. The scheme is to follow summary procedure except where exercise of power under second proviso

to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the court is paid by a specified date, the court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 CrPC. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) CrPC with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.”

11.3 A three judge bench of Hon’ble Supreme Court in **P. Mohanraj and others Vs Shah Brothers Ispat Private Ltd. (2021) 6 SCC 258** adverted with its previous judgments with respect to nature of the proceedings under Section 138 of NI Act and held:

67. A conspectus of these judgments would show that the gravamen of a proceeding under Section 138, though couched in language making the act complained of an offence, is really in order to get back through a summary proceeding, the amount contained in the dishonoured cheque together with interest and costs, expeditiously and cheaply. We have already seen how it is the victim alone who can file the complaint which ordinarily culminates in the

payment of fine as compensation which may extend to twice the amount of the cheque which would include the amount of the cheque and the interest and costs thereupon. Given our analysis of Chapter XVII of the Negotiable Instruments Act together with the amendments made thereto and the case law cited hereinabove, it is clear that a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 IBC, amount to a “proceeding” within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding.

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84. Clearly, therefore, given the hybrid nature of a civil contempt proceeding, described as “quasi-criminal” by several judgments of this Court, there is nothing wrong with the same appellation “quasi-criminal” being applied to a Section 138 proceeding for the reasons given by us on an analysis of Chapter XVII of the Negotiable Instruments Act. We, therefore, reject the learned Additional Solicitor General's strenuous argument that the appellation “quasi-criminal” is a misnomer when it comes to Section 138 proceedings and that therefore some of the cases cited in this judgment should be given a fresh look.

12. From the above quoted provisions of Cr.P.C, judgment of Hon’ble Supreme Court in **Tulsi Ram Patel (supra)**, judgment of Hon’ble Supreme Court in **P. Mohanraj (supra)**, following principles can be culled out:

- i) Court may alter or add charge at any stage;
- ii) Court may permit recalling or re-examining of witness;

- iii) Court may permit to lead additional evidence;
- iv) Court may summon any person as additional accused;
- v) Omission to mention relevant clause or relevant rule in the order does not invalidate the order;
- vi) The object of Sections 138 to 142 of the Negotiable Instruments Act is to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments.
- vii) Despite several remedies, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it.
- viii) The proceeding under Section 138 of NI Act are quasi criminal in nature.

13. Different High Courts time and again have adverted with question of amendment of complaint. Bombay High Court in **Anand (Supra)** while dealing with a case of mistake of cheque number has held:

6. *The mistake in the number of cheque in statutory notice has not been dealt with in reply. It has transpired subsequently for which application Exh.25 was moved but the learned Judge did not pass any order. However, it will not defuse effect of the case as the said cheque was referred in the evidence dealt with by the revision applicant. The statutory notice was at Exh.54 while reply is at Exh.55. In the reply, the accused has denied the transaction. He claimed that one Devidas Kanje had asked the accused to purchase computers and, consequently, under a mirage, to get the commission, he acted in the transaction. The complainant had supplied four*

computers by preparing invoices and the accused had signed them but, according to him, it was for Devidas Kanje. Another defense was, Prithviraj Chavan, with 5/6 persons, barged at his house and obtained two signed cheques bearing No.19960 and 19856 and those two cheques are used by the complainant.

7. This stand raised by the accused applicant, does not reflect in the cross examination of complainant's witness Prithviraj. The defense in the reply notice has conveniently been abandoned. The applicant / accused did not dispute his signature on the cheque. If, indeed, the cheque was not of his account, there was no reason to get it established through Bank witness.

The typographical error in the cheque will not mitigate the situation as the accused, as stated earlier, did not dispute his signature on the cheque. Such mistake cannot be said to be material as the amount covered by the disputed cheque is correctly recorded in the statutory notice.”

13.1 Rajasthan High Court in ***Bhim Singh*** case (supra) while dealing with error regarding number and date of cheque has held:

4. Before proceeding further, it may be clarified first whether the mistakes as pointed out by the complainant petitioner in the complaint were typographical mistakes or not and for that Ex.P/1, which is a cheque, may be referred to where the cheque number has been clearly mentioned as 343336 and in Ex.P/2, which is a letter which was issued by the Bank to the petitioner complainant, the date has been clearly mentioned as 9.1.2001, while in the complaint filed by the complainant petitioner, the cheque number and date have been shown as 383326

and 8.1.2001 respectively. In this view of the matter, the mistakes can be said to be typographical mistakes.

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8. 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 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.

Thus, this Court is of the view that all the criminal courts are having such an auxiliary power subject to restrictions which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else.

9. For the reasons stated above, the typographical mistakes, which have been pointed out by the complainant petitioner, should have been rectified by the trial court, as trial court has inherent power to rectify such typographical mistakes to do justice between the parties.

In the result, this misc. petition under Section 482 Cr.P.C. filed by the petitioner is allowed and the impugned order dated 9.10.2002 passed by the learned Addl. Chief Judicial Magistrate, Nathdwara is quashed and set aside and the amendment application dated 5.1.2002 filed by the complainant petitioner for correction of cheque number and date of information in the complaint is allowed.”

Wires (Supra) while dealing with defect in complaint has held:

14. *The mandate of the above judicial pronouncements appears to be that if any defect in the format of the complaint is brought to the notice, then the Court can allow permission to rectify the same and in this case the Court can even allow the respondent in his individual capacity to prosecute the complaint. Consequently, it has to be taken that the eligibility criteria prescribed under Section 142 of the Act have been fulfilled by the respondent because he being the payee or holder of the cheque in due course was competent to institute the complaint. Thus, from whatever angle the question is examined, there is no merit in the petition and the same is accordingly dismissed.”*

13.3 Madhya Pradesh High Court in ***Pandi Gorelal and another (supra)*** while adverting mistake of cheque number in the notice, complaint and statement has held:

14. *From perusal of record, it is evident that right from beginning in the notice, in complaint and also in the statement in support of the complaint the respondent has alleged the Cheque No. 739949 while in fact it was 739940, which shows the complete carelessness on the part of the respondent. However, keeping in view the law laid by this Court whereby this Court has allowed the application for amendment which has caused due to typographical error, this Court is of the view that no illegality has been committed by the learned trial Court in allowing the application filed by the respondent.”*

13.4 A co-ordinate bench of this court in ***Kumar Rubber Industries, Kapurthala (supra)*** while dealing with amendment qua cheque number has held:

49. Relying upon this decision, the learned counsel for the 1st respondent/complainant contends that, that is why the 1st respondent/complainant has filed a petition for supplementing the complaint and for bringing forth the correct numbers of cheques etc. But, this decision relied upon by the learned counsel for the 1st respondent/complainant will not be of help to the complainant in the circumstances of the case. The defect that has crept into the complaint i.e the omission to give the correct cheque numbers, is not due to any act or omission on the part of the petitioners or the other accused. The complainant has given the number of the cheques, which cheques, according to the complainant himself, have been taken back and fresh cheques were issued. Therefore, the accused are in no way responsible for this defect in the complaint. Even otherwise, the question is whether the complainant can amend the complaint or supplement the complaint by giving the correct cheque numbers etc. In the case before the Hon'ble Supreme Court, it was only a case of misdiscreption of the parties. Inspite of calling for the information, the industrial unit did not give the required information. Therefore, instead of making the company which owned the industrial unit as an accused, the industrial unit was made the accused. The Chairman, Vice Chairman, the Managing Director and the members of the Board of Directors were already arrayed as the accused. Therefore, in the circumstances, it was considered to be a formal

technical defect, which could be cured by an amendment. But, in the present case, the complainant knowing fully well that the cheques bearing No. 466337 to 466340 were taken back and cheques Nos. 2287334 to 2287337 were issued, and despite the fact that this fact has been mentioned in the notice issued under Section 138 of the Negotiable Instruments Act on behalf of the complainant to the accused, based the complaint on the cheques bearing Nos. 466337 to 466340 without even mentioning anything about the other set of cheques. Obviously, the complaint is based upon the cheques bearing Nos. 466337 to 466340. While that being so, the complainant introduced into evidence the cheques bearing Nos. 2287334 to 2287337 in proof of the complaint. So, we find that the cheques on which the complaint is based, have not been produced, whereas a different set of cheques was produced into evidence. The summoning order has been passed only on the basis that the cheques concerned in the complaint were 466337 to 466340 only without taking note of the fact that a different set of cheques was introduced into evidence.

50. Therefore, we find that not only the complaint is defective, but also there is total non-application of mind by the learned Magistrate also. This is not a mere technical defect or a mere misdiscreption of the parties which could be allowed to be amended. The cheques are the very basis of foundation of the complaint. So, when the very foundation has not been properly laid by giving the correct numbers of the cheques, the complaint itself becomes not maintainable. Such a defect which goes to the root of the matter, cannot be allowed to be amended and the complainant cannot be allowed to supplement the

complaint by giving the numbers of fresh cheques as the basis of the complaint. The complaint cannot thus be made to suit the evidence introduced. Therefore, in my view, the complaint has to fail and to be quashed on that account.

13.5 Bombay High Court in ***Neeraj Cement Structural Pvt. Ltd*** (*supra*) while dealing with correction of name of bank has held:

4. *There can be no doubt that an amendment of the nature sought by the respondent No. 1 herein cannot be permitted. The complainant had averred in his complaint that the cheques were drawn on a particular bank. The verification has also been recorded and process has been issued. Further, the plea of the accused has also been recorded. No amendment could have been allowed in the complaint at this stage. Besides, the change of the name of the bank in my opinion, results in a substantial change in the complaint and, therefore, such an amendment cannot be allowed.*

5. *The order allowing the amendment is set aside and is quashed. It is made clear that the application is being disposed of only in respect of prayer Clause (a). As regards prayer Clause (b), the applicant has an alternate remedy of filing a revision and, therefore, he is relegated to that remedy.*

13.6 Madhya Pradesh High Court in ***Sunderdev*** (*supra*) while dealing with question of correction of cheque number has held:

4. *Moreover, in the instant case, Counsel for the petitioner has stated that the mistake of the cheque number was not merely in the complaint alone the same mistake has occurred in the notices sent by the respondent as well as observed by the*

Trial Court in the affidavit and even in the cross-examination of Rohit Neema, the father of the respondent, the cheque number has been wrongly mentioned then to allow the amendment at this stage would be fallacy.

5. A complete new case cannot be built and the application for amendment of the respondent complainant is, therefore, hereby rejected. The learned Judge has erred by allowing the application at this stage of the proceedings when the matter of Section 138 of the Negotiable Instruments Act is considered, the liability as well as the compliance demand strict mandatory compliance then under the said circumstances if the benefit has accrued to the petitioner, the respondent cannot be allowed to get away with the negligence at this stage of the proceedings. 6. I find that the order of the Sessions Court is contrary to provisions of law and cannot be permitted under the circumstances. The impugned order dated 16.3.2007 is set aside and the Trial Court is directed to proceed with the trial in accordance with law.

14. In the case in hand, there is no dispute with respect to running number mentioned on the cheque in question, date in terms of day and month as well amount mentioned therein. As per petitioner, year 2010 instead of 2012 has been mentioned in all the documents i.e. notice, complaint, notice of requisition etc. The petitioner wants to substitute year 2010 mentioned in different

documents by 2012 mentioned on the cheque in question. The respondent is opposing correction/amendment of year on the ground that amendment at this belated stage of trial is not permissible, it would amount to filling up of lacuna and mistake could have been in one document whereas petitioner in all the documents has mentioned year 2010.

15. It is matter of common knowledge that nowadays, documents are prepared on computer and once a file narrating fact and figures is prepared, its contents are copied and pasted in all subsequent documents. Once a mistake is committed in one document, it carries in many subsequent documents till it is noticed. Nobody can claim benefit of his or any other person's mistake.

As per Section 216 of Cr.P.C. court may alter or amend charge, as per Section 311 of Cr. P.C. court may permit re-calling or re-examination of witnesses, as per Section 319 of Cr.P.C. court may summon any person as accused though he is not made accused in police report and as per Section 391 of Cr.P.C. even appellate court may permit to lead additional evidence. As per Section 138-141 of NI Act, 1881 read with above cited judgments, the proceedings are quasi criminal in nature and gravamen of the provisions is to ensure recovery through summary procedure. The object of creation of criminal liability under Section 138 NI Act is to create fear, punish dis-honest drawer of the cheque and create confidence in the banking system as well as financial transactions

through cheques.

If amendment of complaint is not permitted, it may prove fatal to the case of the complainant. On account of clerical mistake which was neither noticed by petitioner nor his counsel, the substantial claim of the drawer may be defeated. An accused cannot be let free just because there is some mistake on the part of complainant. If charge may be amended at any time prior to pronouncement of judgment and parties may be permitted to lead additional evidence even at appellate stage, it seems to be harsh and there would be travesty of justice if a mistake which is unintentional, is not permitted to be corrected. The mistake in question cannot be called as incurable mistake. An accused cannot be extended benefit of some clerical or typing mistake. The petitioner is not asking for amendment of pith and substance or heart and soul of the complaint. The petitioner is simply seeking correction of year. Cheque in question is part of pleadings and petitioner in the evidence, alongwith original bills and ledgers proved original cheque. It is not a case of respondent that litigation qua multiple cheques is going on between the parties. Thus, respondent cannot claim that he was pursuing a case with respect to a different cheque and cross examination took place with respect to different cheque. The application was filed prior to completion of prosecution evidence and defence still has to lead evidence, thus, respondent cannot claim loss of opportunity or actual prejudice except bald

averment. The respondent is attempting to claim benefit of mistake of the petitioner.

16. In view of above discussion and applying the principles laid down by above-cited judgments and different provisions of Cr.P.C. as well NI Act, 1881; this court is of the considered opinion that it would be in the fitness of things and interest of justice if petitioner is permitted to amend the complaint. The present petition deserves to be allowed and accordingly allowed. Order dated 13.7.2018 (Annexure P-1) passed by JMIC, Amloh is hereby set aside and application seeking amendment of complaint is allowed.

(JAGMOHAN BANSAL)
JUDGE

04.01.2023.
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>