

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

Sr. No.115

CRM-M-53889-2022

Date of decision : 17.01.2023

Sahil Spintex Limited and others

.....Petitioner(s)

Versus

Pushpa Devi

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Gaurav Dutta, Advocate for the petitioner(s)

AMAN CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 04.10.2022, Annexure P-4, passed by learned Sessions Judge, Mansa, vide which the order dated 06.09.2022, Annexure P-2, passed by the trial Court was set aside by allowing the application of the respondent for amending the complaint in question.

Learned counsel for the petitioner contends that the learned Revisional Court has committed grave error while allowing the revision by setting aside the well reasoned order passed by the trial Court, dismissing the application filed by the respondents for amendment of the complaint with regard to mentioning that Pushpa Devi is the sole proprietor of M/s Raipuria Trading Company and that Madan Lal is the special power of attorney of Pushpa Devi.

After arguing for some time, when, the Court was not inclined to allow the present petition, learned counsel for the petitioner submitted that he has no objection to the application for grant of permission to amend

the complaint provided he is granted permission to lead the evidence to rebut to the same, else, it may cause an irreparable loss to the petitioners.

Heard.

The complainant-respondent is the sole proprietor of M/s Raipuria Trading Company Mansa. A complaint, Annexure P-1, was filed under Section 138 of NI Act by the respondent against the petitioners on 5.11.2016, through special power of attorney Madan Lal, who was her husband. After the death of her husband, she started prosecuting her complaint by herself and came to know that in the memo of parties in the complaint, it was not mentioned that she was the sole proprietor, but that she is the owner of the said company, she accordingly filed an application for the amendment of the complaint, which was dismissed by the learned trial Court vide order dated 06.09.2020. Aggrieved against the same, she filed revision petition before the learned Sessions Judge, which was allowed vide order dated 04.10.2022.

It is apposite to refer to the said order which reads thus:

“11. Coming to the facts of this case, the complainant wanted to insert the fact in the complaint that Pushpa Devi was the sole proprietor of M/s Raipuria Trading Company and Madan Lal was the special power of attorney of Pushpa Devi. In this case the court had taken cognizance when it proceeded to summon the accused vide order dated 14.02.2017. It was always the case of complainant in the head note of the complaint that she was the owner of Raipuria Trading Company and Madan Lal was her special power of attorney. Meaning thereby that the complainant had this case ever since she filed the complaint and even at the time when the court took cognizance. This Court feels that the trial court had failed to consider this fact. It simply rejected the application on the ground that the same was filed at a belated stage and merely to fill up lacunae in the case. This court feels that even without seeking the amendment the complainant had a case that she was the

owner of the firm and that Madan Lal was his special power of attorney even if there was no specific pleading in the body of the complaint. The head note of the complaint reflected so. If at all the complainant wanted to carry out a formal amendment, there was no likelihood of prejudice to the other side. The trial court ought to have allowed this prayer.

12. The revision-petition in hand is found to be meritorious. The same is allowed. The order dated 06.09.2022 is set aside. The application for amendment of complaint would be deemed to be allowed. The complainant will introduce this limited fact in the complaint and can file an amended complaint. She shall not travel beyond the prayer.”

In so far as the amendment of the complaint is concerned, it would be worthwhile to refer to the law laid down by Hon’ble The Supreme Court of India in the case of **S.R. Sukumar vs. S.Sunaad Raghurav**, (2015) 9 SCC 609 holding that, “What is discernible from the U.P. Pollution Control Board’s case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could 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.

In the case of **Bhim Singh vs. Kan Singh**, 2004(2) RCR (CrI.) 22, wherein a complaint was sought to be amended but the trial Court dismissed the same on the ground that inherent power do not exist and therefore, such mistakes could have not been rectified, the Rajasthan High Court allowed the amendment by observing that, “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.

Adverting to the facts of the present case, it is apparent that the respondent being the sole proprietor of the said firm, wanted to by way of a formal amendment incorporate the said fact, though, in the head note of the complaint she was mentioned as the owner of the firm. In view of the aforesaid fact, this Court need not go into the aspect of the requirement of carrying out the said amendment, be that as it may, Hon'ble The Supreme Court of India has held that curable infirmity can be permitted to be cured by filing a formal application for amendment, which cannot be prejudicial to the other side.

Considering the impugned order in light of the facts and circumstances and the judgments referred to hereinabove, this Court finds no illegality or perversity in the same, which calls for any interference. However, in order to secure ends of justice, the trial court to grant an opportunity to the petitioners, as prayed for by the learned counsel for the petitioners.

Disposed of accordingly.

17.01.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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