



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 368 OF 2024

TAURUS AUTO DEALERS PVT. LTD C/O DIRECTOR RAJIV MALVIYA
VERSUS

Y.V.Z. MOTORS PVT. LTD. G.P.A. HOLDER MAHESH VINOD ZAWERI

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Mr. Mangesh G. Patil, Advocate for the Petitioner

Mr. A.A. Joshi, Advocate h/f Mr. S. V. Natu, Advocate for Respondent

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd APRIL, 2024

PER COURT :

1. This petition filed under Article 227 of Constitution of India, takes exception to the order dated 29/01/2024, passed by learned Judicial Magistrate First Class, Aurangabad, below Exhibit-64 in S.C.C. No.1250/2017.

2. Respondent has filed complaint under Section 138 of Negotiable Instruments Act, against petitioner contending that respondent was dealer of Ford Motor Company and a Ford Vehicle was sold to petitioner company. Towards consideration amount / payment of the vehicle, cheque of Rs.9,29,033/- was issued by petitioner to respondent. On presentation, said cheque was dishonored, hence, demand notice was issued, which was not replied by petitioner. Hence, respondent filed S.C.C. No.1250/2017, through General Power of Attorney holder-employee Mahesh Zaweri. His evidence affidavit was filed on 21/12/2018. Since

petitioner failed to cross-examine him 'no cross' order was passed against petitioner on 18/02/2019, which was set aside at the instance of petitioner on 18/11/2019. Thereafter, since Mahesh Zaveri left respondent company, respondent sought time for filing evidence affidavit of another employee Padmakar Mahajan. He too left respondent company and hence, respondent filed evidence affidavit of Harshwardhan Yogesh Zaveri on 29/01/2020. Petitioner failed to cross examine Harshwardhan Zaveri. Hence, 'no cross' order was passed against petitioner on 04/07/2021. Again, at the instance of petitioner, on 08/08/2023 said order was set aside by the trial Court.

3. Respondent then filed application seeking permission to amend the complaint stating that complaint was filed by Mahesh Vinod Zaveri and due to technical and official problem Mahesh Zaveri is unable to attend Court proceedings, due to which Y.V.Z. Motors authorised Padmakar Mahajan to attend court proceedings on behalf of it. Thereafter Padmakar Mahajan was also unable to attend court proceedings, hence, Y.V.Z. Motors passed resolution on 19/09/2019 and authorised Harshwardhan Zaveri for court proceedings. Harshwardhan Zaveri filed evidence affidavit on 29/01/2020 at Exhibit-49, which is ordered to be read and recorded by the Court. Harshwardhan Zaveri is ready to proceed with the case till its disposal. Hence, necessary amendment may be

permitted to be made in the complaint.

4. Petitioner opposed said application contending that the application is not maintainable and complainant has filed evidence affidavit of three different persons without permission of the Court. As per criminal procedure amendment is not acceptable and hence, application be rejected.

5. Trial Court has allowed the application holding that new authority is given to Harshwardhan Zaweri and he is ready to depose before the Court on behalf of complainant, no prejudice will be caused to accused as they have chance to cross-examine witness. Since complainant has changed his authority, trial Court has allowed the application in the interest of justice. This order is impugned by the petitioner.

6. Heard learned advocate for petitioner and learned advocate or respondent. Perused the memo of writ petition along with documents annexed thereto.

7. Learned advocate for petitioner submits that serious prejudice will be caused to petitioner if Harshwardhan Zaweri is permitted to depose on behalf of complainant. Amendment as is allowed by the trial Court is not in consonance with the settled legal position. Hence, the impugned order cannot be sustained. In support of his contention, he placed reliance on ***Suman Devi Vs.***

Chhatarpal, LAWS(P&H)-2023-1-218 and S.R. Sukumar Vs. S. Sunaad Raghuram, (2015) 9 SCC 609.

8. Learned advocate for respondent, on the other hand, supported the impugned order by relying on ***Amol Shripal Sheth Vs. Hari Om Trading Co. and Other, 2014 (6) Mh.L.J. 222.***

9. Undisputably complaint under Section 138 is filed in the name of company i.e. Y.V.Z. Motors Pvt. Ltd, through G.P.A. holder Mahesh Vinod Zaveri, as company at that point of time authorised him to represent it, in the complaint. It appears that since Mahesh Zaveri has left the company, so also, Padmakar Mahajan, the company has now authorized Harshwardhan Zaveri to prosecute complaint on it's behalf.

10. It is a matter of record that Mahesh Zaveri has filed evidence affidavit on 21/12/2018 and 'no cross' order was passed against petitioner on 18/02/2019, which is set aside on 18/11/2019. Thereafter, though time was sought by respondent company to file evidence affidavit of Padmakar Mahajan, the same could not be filed as even Padmakar Mahajan has left the company. In this background Harshwardhan Zaveri was authorized to represent respondent company in the proceedings and he has filed evidence affidavit on 29/01/2020, at that time no objection was raised by petitioner. As petitioner failed to cross-examine said witness, 'no cross' order was

passed against petitioner on 04/07/2023. Said order was set aside at the instance of petitioner on 08/08/2023. Thereafter, respondent has filed amendment application at Exhibit-64. Merely because at earlier point of time evidence affidavit was filed by different person authorized by the company, it does not preclude the company from authorising another person to represent it in a complaint filed under Section 138 of N.I. Act.

11. No prejudice is likely to be caused to petitioner as Harshawardhan Zaweri would be deposing in tune with complaint filed by respondent complainant and petitioner will be having right to cross-examine him. Therefore, there is no substance in the contention of petitioner that serious prejudice will be caused to petitioner if amendment thereby authorizing Harshvardhan Zaweri to prosecute complaint is permitted to be made.

12. Decision in **S.R. Sukumar** (supra) is on the point of amendment in criminal complaint filed under Section 190 of Cr.P.C. It is held that although there is no specific provision in Cr.P.C. to amend a complaint or a petition filed under Cr.P.C., if 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 would be caused to the other side, Court may permit such amendment to be made. It is well settled that proceedings under Section 138 of N.I. Act, is quasi civil and the amendment which is

sought by respondent and permitted by the trial Court, does not fundamentally change the allegations in complaint.

13. Decision in ***Suman Devi*** (supra) is rendered in different facts and therefore, is of no help to the case of petitioner.

14. Reliance of learned advocate for respondent in ***Amol Shripal Sheth*** (supra) is well placed. In the said ruling learned Single Judge of this Court has held that magistrate has incidental and ancillary power to main power of taking cognizance of offence to allow such amendment. No case is made out by petitioner to exercise extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)