



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

114 CRIMINAL WRIT PETITION NO. 1574 OF 2023

VIKASH ANKUSHRAO JOGDAND

VERSUS

PUJA CAR A.C. THROUGH ITS PROPERIETOR SANJAY
DASHRATH WAGH AND ANOTHER

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Advocate for the Petitioner : Mr. Pankaj A. Bharat

APP for Respondent/State: Ms. Uma S. Bhosale

Advocate for Respondent no.1 : Mr. A.A. Joshi h/f Mr.Natu Sharad V.

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 15th July, 2024.

P.C.:

1. By this writ petition the petitioner has challenged the impugned order dated 3rd October, 2023 passed by Sessions Judge, Ahmednagar in the proceedings of Criminal Revision Application No.98 of 2023, thereby rejecting the revision filed by the petitioner.

2. It is contention of the learned counsel for the petitioner that the respondent has filed the complaint against the petitioner under section 138 of the Negotiable Instruments Act, (for short, "N.I. Act") alleging therein that the petitioner herein has issued cheque to the respondent and the said cheque is dishonoured. The petitioner has not repaid the amount, therefore, the complaint is filed against the petitioner, which is pending before the learned trial Court. The learned counsel further submitted that in the said complaint the evidence of both the parties is over and matter is posted for arguments. Then the respondent had filed application for amendment in the complaint alleging that the date

on the cheque is wrongly mentioned in the complaint and averments made in complaint about repayment of loan amount as six months, it should be one year and six months. The said application was allowed by the trial Court. The said order was challenged before the Sessions Court. The Sessions Court has rejected the revision. The learned counsel further submitted that the petitioner has cross-examined the respondent on various aspects including the date on cheque and schedule of repayment. To fill up the lacuna in the complaint, the said application was filed but this fact is not considered by both the Courts. The learned counsel further submitted that there is no provision in Criminal Procedure Code to amend the complaint, hence requested to allow the writ petition.

3. It is contention of the learned counsel for the respondent that due to typographical error the date of cheque is wrongly mentioned in the complaint and the period of repayment of loan is also wrongly mentioned. The respondent wants to amend it in the complaint. Accordingly, the application was filed and it is allowed. The learned counsel further submitted that no prejudice is going to be caused to the petitioner after amendment. The petitioner has right to cross examine the respondent. There is date on cheque so the respondent wants to correct typographical error made in complaint. Both the trial Courts have considered this fact. The orders passed by both the Courts are legal and valid, no interference is required in it. The learned counsel

relied on **S.R. Sukumar Vs. S. Sunaad Raghuram** reported in **(2015) 9 SCC 609**.

4. I have heard both the learned counsel. Perused the impugned order. While passing the order, the Sessions Court has observed that the averments and statements on oath are the material relevant for deciding a fact in issue. Whether accused issued cheque in favour of the complainant and whether it bears the date of 25th January, 2018 are facts in issue. They are to be decided on merits in the light of the evidence available on record. Hence I am unable to accept the contention of learned advocate for the accused/petitioner that the impugned order caused prejudice to the accused. I do not find any infirmity in the observations of the Sessions Court as the respondent wants to correct the typographical error in the complaint. Moreover, if the petitioner intends, he can cross-examine to the respondent on that issue. The Hon'ble Apex Court in the case of **Sukumar (cited supra)** has observed that although there is no specific provision in Cr.P.C. to amend a complaint or a petition filed under Cr.P.C., 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 would be caused to the other side, court may permit such amendment to be made. The ratio laid down in the above said case is squarely applicable to the present case, hence I pass the following order :-

ORDER

- (i) The writ petition is dismissed.

[SHIVKUMAR DIGE, J.]

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