



Crl.R.C.No.1841 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1841 of 2024
and Crl.MP.No.15128 of 2024

A.L.Udhaya

... Petitioner

Vs.

K.Ruthuparna

... Respondent

PRAYER: Criminal Revision Case filed under Section 397/438 r/w. Section 401/442 of Cr.P.C./ BNSS to set aside the order made in Crl.M.P.No.43478 of 2024 in S.T.C.No.1473 of 2021 on the file of the learned XXV Metropolitan Magistrate, Egmore, Chennai

For Petitioner : Mr.S.Lakshmanasamy
For Respondent : Mr.V.Chandrakanthan

ORDER

The revision challenges the order passed by the learned Magistrate allowing the petition filed by the respondent to amend the complaint filed by the respondent.



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2.The case of the respondent in the complaint is that the petitioner had obtained loan from the complainant and towards discharge of the said loan had issued a cheque for Rs.1,60,000/-; that when the cheque was presented for collection, it was returned for the reason “Funds Insufficient” and in spite of statutory notice, the petitioner did not make any payment.

3.The respondent had also filed a proof affidavit to the very same effect. Thereafter, the petitioner had filed Crl.M.P.No.43478 of 2024 seeking for deletion of certain statements made in the complaint as well as the proof affidavit stating that those statements were made inadvertently and the cheques were in fact issued towards rental arrears and therefore, amendment should be allowed by the learned Magistrate.

4.The petitioner herein opposed the said petition on the ground that there is no provision under Criminal Procedure Code to amend a complaint and the complaint cannot be amended unless it is a curable infirmity and the infirmity that is sought to be rectified is not curable especially when the amendment was sought to be made after cross examination of the



complainant.

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5.The learned Magistrate after taking into consideration the submissions made on either side allowed the petition filed by the respondent and permitted the respondent to delete certain portions in the complaint and in the proof affidavit. The petitioner aggrieved by the said order has preferred the instant revision.

6.The learned counsel for the petitioner reiterated the submissions made by the petitioner before the Trial Court and submitted that no amendment can be permitted in a complaint and relied upon the judgment of the Hon'ble Supreme in ***Crl.A.No.844 of 2015 [S.R.Sukumar vs. S.Sunaad Raghuram]*** dated 02.07.2015. The learned counsel further submitted that the amendment that is sought to be made changes the character of the complaint especially when it is made after the cross examination of the complainant and prayed for setting aside the order of the learned Magistrate.

7.The learned counsel for the respondent, per contra, submitted that the submissions made in the complaint and in the proof affidavit was



inadvertently made and in fact there are documents to show that the cheque was issued only towards rental arrears and therefore, there is no infirmity in the order of the Trial Court. The learned counsel relied upon the following judgments of the Hon'ble Supreme Court and that of this Court:

- 1) S.R.Sukumar vs. S.Sunaad Raghram [Crl.A.No.844 of 2015 dated 02.07.2015]
- 2) J.Magdalene Rejula vs. K.Ramesh [Crl.RC.No.1051 of 2021 dated 03.01.2022]
- 3) S.Manivannan vs. Digvijay Singh Chouhan rep. by Authorized Signatory and Special Power of Attorney M/s.Gipsy Management Pvt. Ltd. [Crl.O.P.No.17883 of 2023 dated 24.01.2024]
- 4) V.R.Palanisamy vs. Chandrasekaran [Crl.O.P.No.3130 of 2024 dated 26.03.2024]

8.From the perusal of the impugned order, it can be seen that in the complaint the petitioner had stated that the cheque was issued towards discharge of a loan account. The exact words sought to be deleted from the complaint reads as follows:

“The complainant submits that the accused has made false representation and induced the complainant to give



the loan amount and issued a cheque without having funds in his account.”

9.The very same averment has been stated in the proof affidavit as well. The petitioner had not sought for amendment immediately after filing of the complaint. Admittedly the amendment was sought after the cross examination of P.W.1/complainant. The Hon'ble Supreme Court in the case of ***S.R.Sukumar vs. S.Sunaad Raghram*** held that there is no provision under Cr.P.C. to amend a complaint but amendments can be permitted to correct curable infirmities such as the cheque number as also the difference in the name of the accused. The relevant observation reads as follows:

“18.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. On the contrary, if the amendment sought to be made in



the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.”

10.In the judgment cited by the learned counsel for the respondent passed by this Court in **J.Magdalene Rejula’s** case [cited supra], the amendment that was sought is with regard to Cheque number. As regards the order in the case of **S.Manivannan vs. M/s.Gipsy Management Pvt. Ltd.** [cited supra], the amendment that was sought was with regard to the manner in which the accused was described in the complaint. Therefore, this Court had permitted the amendment. In the case of **V.R.Palanisamy vs. Chandrasekaran** [cited supra], the amendment that was sought is with regard to cheque number. This Court is of the view that none of the said judgments would come to the aid of the respondent. In all those cases, what was sought to be amended was a curable infirmity whereas in this case, the nature of alleged liability is sought to be amended which cannot be permitted. Therefore, this Court is of the view that the order of the learned Magistrate has to be set aside. Accordingly, the impugned order in



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Crl.M.P.No.43478 of 2024 in S.T.C.No.1473 of 2021 dated 03.10.2024 on the file of the learned XXV Metropolitan Magistrate, Egmore, Chennai is set aside. However, at the same time it is open to the respondent to establish before the Court that the statements which is sought to be deleted now were made inadvertently and there is other evidence on record to show that the cheque was issued towards rental arrears and it is also open to the accused to establish that it is not so. The learned Magistrate may thereafter consider the rival contentions on merits and decide the case in accordance with law.

11.With the above observations, the Criminal Revision stands allowed. Consequently, connected miscellaneous petition is closed.

27.11.2024

Index:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
cse

SUNDER MOHAN, J.

cse



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To

The Metropolitan Magistrate
Fast Track Court II, Allikulam.

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