

CRM-M-31817-2017
Reserved on: 31.01.2024
Pronounced on: 05.02.2024

.....Respondent

2. Briefly, the facts are that the petitioner issued a cheque no. 047324 dated 24.08.2015 for an amount of Rs. 1,91,100/- in favour of the respondent-complainant which was dishonoured on presentation for encashment vide memo dated 25.08.2015 with the remarks- 'funds insufficient.' Thereafter, a legal notice

dated 02.09.2015 was sent to the petitioner to call upon him to make the payment. However, the petitioner failed to make the requisite payment and the present complaint was filed on 25.09.2015.

3. On finding a prima facie case, the learned trial Court, vide order dated 25.09.2015 (Annexure P-4) summoned the petitioner to face trial for commission of offence under Section 138 of the NI Act. Thereafter, notice of accusation dated 08.01.2016 was served upon the petitioner by the learned trial Court, to which he pleaded not guilty and claimed trial.

4. During the pendency of the case, the respondent filed an application on 07.12.2016 (Annexure P-6) seeking amendment of title of the complaint by replacing 'M/s Ever Onwards' as the complainant with only 'Randeep Singh Arora,' who has already been mentioned in the title as director of the said firm, as the firm has no association with the alleged occurrence. The learned trial Court, vide order dated 08.02.2017 (Annexure P-1), allowed the said application. Aggrieved by the same, the petitioner filed a revision petition before the learned Additional Sessions Judge, Amritsar, which was dismissed vide order dated 01.07.2017 (Annexure P-2).

5. Learned counsel for the petitioner submits that the learned Courts below have erred in allowing the application for amendment of complaint title as there is no provision in the Cr.P.C that allows for the same. An amendment can only be allowed if it is sought before the competent Court takes cognizance of the complaint and that stage has already passed as the learned trial Court took cognizance while issuing summoning order dated 25.09.2015. Further, the amendment sought pertains to a serious infirmity that goes to the root of the matter and as such, cannot be allowed. Reliance in this regard can be placed on the judgment rendered by the Hon'ble Supreme Court in **S.R. Sukumar v. S. Sunaad**

Raghuram 2015(3) R.C.R(Criminal) 570 and this Court in **Jai Mata Traders v. Unique Foundary Regd. CRM-M-22475-2008**.

6. Per contra learned counsel for the respondent submits that the original title reads 'Ever Onwards Private Limited, 26 FF, Nehru Shopping Complex, Lawrence Road, Amritsar through its Director Randeep Singh Arora' and the presence of 'M/s Ever Onward through its Director' is merely a typographical mistake. In fact, a perusal of the record would indicate that the legal notice sent in respect of the disputed cheque, was issued on instructions of Randeep Singh Arora and M/s Ever Onwards has no business with the alleged occurrence. He further places reliance on the judgment rendered by the Hon'ble Supreme Court in **Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Another 2016 AIR (Supreme Court) 2519** and this Court in **Suman Devi v. Chhatarpal CRM-M-6036-2018**.

7. Having heard learned counsel for the parties and perusing the record of the case, it transpires that Randeep Singh Arora is the Director of the respondent-firm. The firm as such has no association with the dishonoured cheque which is evident from the fact that the petitioner did not challenge the complaint or the summoning order on the ground that firm is no longer arraigned as an accused or that Randeep Singh Arora is arraigned in his personal capacity. Therefore, the infirmity was correctly cured by the learned trial Court by allowing the application for amendment of title of the complaint. The amendment is merely formal in nature and does not impact the heart of the case. Moreover, no prejudice has been caused to the petitioner by the amendment allowed in the case title and he can still raise all pleas available to him.

8. A two Judge bench of the Hon'ble Supreme Court in **S.R. Sukumar v. S. Sunaad Raghuram (2015) 9 SCC 609**, speaking through Justice R.

Banumathi, the following was held:

*“17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In **U.P. Pollution Control Board v. Modi Distillery And Ors., (1987) 3 SCC 684**, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-*

“...The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery.... Furthermore, the legal infirmity is of such a nature which could be easily cured...”

*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.”*

Further, a two Judge bench of the Hon'ble Supreme Court in **Kunapareddy @ Nookala Shanka Balaji(supra)**, speaking through Justice A.K. Sikri, made the following observations:

“18. What we are emphasising is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in

appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.”

9. In view of the discussion above, the present petition is dismissed and order dated 08.02.2017(Annexure P-1) passed by learned Judicial Magistrate Ist Class, Amritsar and order dated 01.07.2017 (Annexure P-2) passed by learned Additional Sessions Judge, Amritsar are upheld.

(HARPREET SINGH BRAR)
JUDGE

05.02.2024
Ajay Goswami

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No