122

2024:PHHC:109169

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

**CRM-M-53932-2023(O&M)
Date of Decision : 23.08.2024**

RANA MILK FOOD PRIVATE LTD. AND ANOTHER
.....Applicant/Petitioners

VERSUS

BANSAL MILK CHIILLING CENTRE .....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Keshav Partap Singh, Advocate,
for the applicant/petitioners.

Ms. Kiran Devi, Advocate,
for the respondent.

KULDEEP TIWARI, J.(Oral)

CRM-33544-2024

1. For the good and valid reason assigned in the application, same is allowed and rate list of GST of goods is taken on record as Annexure P-8.

CRM-M-53932-2023

2. The application moved by the respondent/complainant seeking amendment in the complaint bearing no.COMA-1123-2022 (NACT/85/2023), dated 11.04.2022, after the cognizance being taken for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, by the learned trial court concerned, was allowed vide

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impugned order dated 02.09.2023 (Annexure P-7), which caused grievance to the accused/petitioners, and propelled them to file the instant petition under Section 482 Cr.P.C. invoking inherent jurisdiction of this Court seeking quashing thereof.

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE PETITIONERS

3. Learned counsel for the petitioners submits that the very nature of the complaint has in fact changed by allowing the amendment in the complaint, and which is not permissible, that too after the cognizance of offence has already been taken by the learned trial court concerned.

4. He further submits that in fact the entire complaint as well as in the legal notice it is the positive case of the respondent/complainant that they only deals in the business of *deshi ghee* (oil and other milk products), and its not a claim in their case that they ever dealt in selling the milk.

5. He further submits that moment the respondent/complainant realised upon that it is required to pay GST, in case it sells *deshi ghee* to the petitioners, therefore, in order to wriggle out that legal problem, he sought amendment in the instant complaint to replace the product from *deshi ghee* to that of milk as there is no requirement of payment of GST on selling milk.

6. He further submits that all endeavour is to fill up the *lacuna* which cannot permissible under the garb of the amendment in the complaint.

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2024.09.06 10:33
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<u>SUBMISSIONS MADE LEARNED COUNSEL FOR THE RESPONDENT/COMPLAINANT.</u>

7. Learned counsel for the respondent/complainant vociferously opposed the prayer made by learned counsel for the petitioners/accused, and submits that these amendments were carried out only with regard to the products which were sold to the petitioners/accused, and that would not at all be considered as changing the nature of the complaint.

8. She further placed reliance upon a judgment passed in **"S.R.Sukumar vs. S.Sunaad Raghuram", 2015 (3) RCR 570**, to submit that in case there is no change in the nature of the complaint, there is no restrictions upon the learned trial court concerned to allow the amendment application.

9. She also submits that in case there is any dispute with regard to the nature of the product, it is always open for the petitioners/accused to counter the respondent/complainant, at the time of cross-examination, and therefore, the amendment would never cause any prejudice to the petitioners.

10. She in addition submits that the respondent/complainant is also dealing in the selling of milk products, therefore, merely seeking amendment from "supply of d*eshi ghee* to milk", is purely a typographical error which has rightly been allowed through the impugned order. Over and above she submits that the milk product also covers the milk itself. To substantiate the submissions (*supra*), she further placed reliance upon a judgment passed by a co-ordinate bench of this Court in

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2024.09.06 10:33
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“Rakesh Kumar vs. Jasbir Singh” 2013(22) RCR (Crl.) 382, wherein the co-ordinate bench has held the said amendment to be justified, on account that the cross-examination is yet to be held. She finally submits that the merits of the matter cannot be seen into at this stage, it can only be examined at the final stage by the learned trial court concerned.

ANALYSIS

11. This Court has considered the rival submissions made by both the parties concerned, and perused the entire case file.

12. The instant complaint has been filed by the respondent/complainant, alleging therein that it only deals in the business of *deshi ghee* (oil) and other milk products and its having own manufacturing unit regarding the same and the petitioners/accused had been purchasing *deshi ghee* (milk products) on the credit basis from the respondent/complainant, and on the basis of order that seek from the petitioners/accused, respondent/complainant supplies *deshi ghee* as per their requirement, and invoice was also issued in lieu thereof. In discharge of the payment the petitioners/accused issued some cheques which were subsequently dishonoured, and it forced the respondent/complainant to file the instant complaint. Even in the legal notice served to the petitioners/accused, the stand of the respondent/complainant was the same.

13. There is no dispute with regard to the power of the learned trial court concerned, to allow the amendment in a complaint, if that is a typographical error/mistake, and does not cause any prejudice to the

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2024.09.06 10:33
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accused person. However, this Court has found that the amendment, which was sought in the instant matter, is not merely a typographical error, but it has wider impact upon the entire matter in dispute, therefore, in fact, it changed the nature of the complaint.

14. The complaint which was filed by the respondent/ complainant, under which the petitioners/accused are facing trial, the following averments have been made.:-

> "2 The complainant company is engaged in the business of marketing of **Desi ghee (Oil) and other milk products** and is having own manufacturing units regarding the same.
> 3. That the accused no.3 had been purchasing Desi Ghee (Milk Produces) on credit basis from complainant.
> 4. That the complainant upon orders received from the accused at its **office supplied Desi Ghee as per the requirements of the accused.(emphasised specifically)** The invoices covering the said goods were issued to the accused for payment from time to time. The complainant is maintaining regular books pertaining to the said supplies."

15. The study survey of the above reflects that the respondent/complainant alleges that they only deals in the *deshi ghee*, oil, etc. and other milk products, and having their own manufacturing unit for this purpose and supplied *deshi ghee* as per requirements. It is nowhere, the case of the respondent/complainant that it ever dealt with milk. Even in the legal notice served by the respondent/complainant through their counsel, the stand remained the same, and the relevant contents of the said legal notice dated 14.03.2022 (Annexure P-3) reads as under:-

> "1.That complainant company deals in **business of Desi Ghee (Oil) and other milk products** and is having own manufacturing units regarding the same.
> 2. That accused no.3 had been purchasing **Desi Ghee (milk Products)** on credit basis from my client.
> (3) That you accused no.1 and 2 on behalf of accused no.3 issued cheque dated 31.12.2021 of Rs.4,00,000/- bearing No.645365 dated drawn on Punjab National Bank, Khanna, cheque dated 31.1.2022 Rs.5,00,000/- bearing no.645366 drawn of on Punjab National Bank,

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2024.09.06 10:33
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> branch Khanna, cheque dated 28.2.2022 no.645367 drawn of on Rs.5,00,000/- bearing Punjab National Bank, Branch Khanna against part payment due in favour of my client and total amount due was Rs.24012200/-."

16. This Court finds strength in the submissions made by learned counsel for the petitioners/accused, that in fact the respondent/complainant want to seek amendment in the complaint by replacing the product "milk" from that of "*deshi ghee*", as no GST is payable on milk, whereas 12% GST is payable on milk product, i.e. *deshi ghee* (oil).

17. Annexure P-8, which prescribes the GST on goods, clearly substantiate the submissions of learned counsel for the petitioners/accused, and as per that, products mentioned in Schedule-I, carries no GST, and serial no.25 thereof, fresh milk is mention. The relevant extract thereof reads as under:-

25.	0401	Fresh milk and masteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk.

18. Whereas, goods in dispute i.e. *ghee*, oil etc. which carries GST at the rate of 12%, finds mentioned at Sr. no.12 in Schedule V, which reads as under:-

12	0405	Butter and other fats (i.e.ghee, butter oil, etc.) and oils derived from milk; dairy spreads.

19. Therefore, from the above, this Court can safely conclude that the instant amendment as sought in the complaint by respondent/complainant is not a sheer typographical error, rather the same has been sought to come out with the problem of reflecting the payment

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2024.09.06 10:33
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of GST on account of allegedly selling *deshi ghee* (oil), to the present petitioners/accused.

20. Further, it is nowhere case of the petitioners that throughout from serving of legal notice, as well as from the complaint that they have ever dealt in selling of milk, rather their positive case is that they only deal in *ghee* and the milk product.

21. The submission made by learned counsel for the respondent/complainant, that milk product contains milk, does not find substantiate from the fact that in case the respondent/complainant had sold the milk, they should have specifically mentioned in the complaint and legal notice that they deals in selling of the milk also, are apart from selling the milk product and *ghee* (oil).

FINAL ORDER

22. In view of the above, the instant petition is **allowed** and the impugned order dated 02.09.2023 (Annexure P-7), is hereby **quashed**.

23. All pending application(s) stand disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

August 23, 2024
dharamvir

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

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