



2024:DHC:9694

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on:16.12.2024

+ **CRL.M.C. 5209/2019, CRL.M.A. 38043/2019 & CRL.M.A. 3221/2021**

S.G WINES & ANR

.....Petitioners

versus

SAB MILLER INDIA LTD.

.....Respondent

+ **CRL.M.C. 5220/2019, CRL.M.A. 38076/2019 & CRL.M.A. 3397/2021**

S.G. WINES & ANR

.....Petitioners

versus

SAB MILLER INDIA LTD.

.....Respondent

+ **CRL.M.C. 5221/2019, CRL.M.A. 38079/2019 & CRL.M.A. 3296/2021**

S.G WINES & ANR

.....Petitioners

versus

SAB MILLER INDIA LTD.

.....Respondent

+ **CRL.M.C. 5222/2019, CRL.M.A. 38081/2019 & CRL.M.A. 3399/2021**

S.G WINES & ANR

.....Petitioners

versus

SAB MILLER INDIA LTD.

.....Respondent

+ **CRL.M.C. 3396/2022 & CRL.M.A. 14241/2022**
S.G. WINES A PARTNERSHIP FIRM THROUGH
ITS PARTNER R. SELVAM & ANR.

.....Petitioners

versus

SAB MILLER INDIA LTD.

.....Respondent

Signature Not Verified

Signed By: KAMALDEEP
KAUR
Signing Date: 21.12.2024
12:13:11

**Advocates who appeared in these cases:**

For the Petitioners : Mr. Aseem Mehrotra & Ms. Deeksha Mehrotra, Advs.
For the Respondent : Ms. Shivani Tayal & Mr. Sumit Panwar, Advs.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petitions are filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') essentially seeking quashing of Criminal Complaint Nos. 10977/2018, 10966/2018, 10965/2018, 10967/2018 and 10963/2018 filed by the respondent against the petitioners for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') read with Section 141 of the NI Act.
2. The petitioners have also challenged the respective summoning orders in the aforesaid complaints.
3. The brief facts of the cases are that Respondent No.2 (the complainant company), which is a manufacturer and distributor of various brands of beer, had entered into a Distribution Agreement dated 01.04.2016 with Petitioner No.1 (the accused firm) whereby Petitioner No.1 was appointed as the exclusive distributor for Respondent No.2 in Puducherry. It is alleged that a sum of ₹1,07,93,057.81/- was due to be paid by Petitioner No.1 against purchase of beer. In furtherance of the same, multiple cheques were issued on behalf of Petitioner No.1 to the complainant company which were returned unpaid with remarks- "ACCOUNT CLOSED".



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Petitioner No.2 is the partner of Petitioner No.1 firm and the authorised signatory of the cheques in question.

4. Thereafter, the name of the complainant company was changed from Sab Miller India Ltd. to M/s. Anheuser Busch Inbev India Ltd. and fresh certificate of incorporation pursuant to change of name was issued by the Office of the Registrar of Companies on 28.05.2018.

5. Subsequently, the subject complaints were filed in the month of June, 2018 in the old name of the complainant company.

6. The learned counsel for the petitioners submitted that the respective complaints are not maintainable in law as the respondent company stood merged with Anheuser Bursch Inbev Ltd. before filing of the complaint. He submitted that the merger took place in May, 2018, however, the complaints were subsequently filed on 08.06.2018 in the old name only.

7. He submitted that as per the Certificate of Incorporation issued by the Ministry of Corporate Affairs on 28.05.2018, the respondent ceased to exist in the eyes of law and therefore the complaints were *ex facie* not maintainable and the proceedings were *non-est* in law.

8. He submitted that the respondent had not approached the Court with clean hands and misled the learned Trial Court by not disclosing the fact of its merger and the complaints were an abuse of the process of law.

9. He placed reliance on the judgments in the cases of ***Munish Kumar Gupta v. Mittal Trading Co. : 2024 SCC OnLine SC 1732*** and ***S.R. Sukumar v. S. Sunaad Raghuram : (2015) 9 SCC 609***. He submitted that grave prejudice would be caused to the petitioners if the



amendment of the complaints is allowed after six years as the same would essentially permit a time barred complaint to be taken on record as the complaint was filed by a non-existent entity.

10. He submitted that unlike the Companies Act, 1956, the Companies Act, 2013 has no provision stipulating that the change of name shall not affect the rights or obligations of the company and that the legal proceedings which might have been continued or commenced by or against the company in its former name may be continued in its new name.

11. He further submitted that the cheques in dispute were issued as surety and the assertion is corroborated by the Distribution Agreement between the parties. He submitted that the payments were being made to the respondent through RTGS.

12. The learned counsel for the respondent submitted that the application for change in name of the complainant company had already been preferred by the respondent.

13. He submitted that it is not a case of merger or amalgamation and only the name of the complainant company had been changed. He submitted that there are no other legal impediments or consequences and the present petitions have been filed with the mere purpose of delaying the trial.

14. He submitted that Section 23(3) of the Companies Act, 1956 clearly provides that the legal proceedings commenced by the company in its former name may be continued by its new name. He submitted that in the absence of any new provision to the contrary in



Companies Act, 2013, the same rationale ought to apply in the present case as well.

15. He submitted that even otherwise, no prejudice would be caused by a mere change of name to the petitioners.

ANALYSIS

16. At the outset, it is relevant to note that the inherent jurisdiction of the Court under Section 482 of the CrPC ought to be exercised sparingly especially when the matter is at the stage of issuance of summons as the same has the effect of scuttling the proceedings without the parties having an opportunity to adduce the relevant evidence. The Hon'ble Apex Court, in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi) : 2022 SCC OnLine SC 513***, advertent to a catena of judgments, had underscored the parameters for exercising inherent jurisdiction to quash the proceedings at the stage of the summoning order. The relevant portion of the impugned order is reproduced hereunder:

*“14. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two judges' bench in **State of Haryana v. Bhajan Lal** [1992 Supp (1) SCC 335 : AIR 1992 SC 604], and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.*

‘103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an



arbitrary jurisdiction on the court to act according to its whim or caprice.'

15. In the impugned judgment, the learned Judge had rightly relied upon the opinion of Justice J.S. Khehar for a Division Bench in Rajiv Thapar (supra), which succinctly express the following relevant parameters to be considered by the quashing Court, at the stage of issuing process, committal, or framing of charges,

'28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same.'

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.



*18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. **Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.***

(emphasis supplied)

17. In the present case, apart from raising an argument in relation to the cheques in dispute being given as security, the petitioners have sought to challenge the complaints essentially on the ground that the same are not maintainable by virtue of the same being filed in the old name of the complainant company.

18. It is argued that even though the name of the complainant company was changed on 28.05.2018, however, the complaints were subsequently filed in the erstwhile name in June, 2018.

19. The petitioners have placed reliance on the judgments in the cases of *Munish Kumar Gupta v. Mittal Trading Co.* (*supra*) and *S.R. Sukumar v. S. Sunaad Raghuram* (*supra*). This Court considers it apposite to discuss the said judgments before proceeding further.

20. In the case of *Munish Kumar Gupta v. Mittal Trading Co.* (*supra*), the Hon'ble Apex Court had set aside the order whereby the concerned High Court had permitted the complainant to amend the date in the complaint by observing that if such amendment was not permitted, the same will be fatal to the case of the complainant. In the said case, the complainant therein had claimed that the error in the date of the cheque in dispute in the evidence as well as the complaint was merely typographical in nature. The Hon'ble Apex Court observed that the date of the cheque is a relevant aspect as the same



was instrumental in determining whether the issue of notice was within the time frame as provided under the NI Act and as to whether there was sufficient balance in the account of the issuer on the date. In view of the same, it was held that the amendment as sought for was not justified.

21. In the case of *S.R. Sukumar v. S. Sunaad Raghuram* (*supra*), the Hon'ble Apex Court *inter alia* considered whether the amendment to a complaint filed under Section 200 of the CrPC was allowed and if the order by way of which the amendment was allowed suffered from any infirmities. The relied upon paragraph of the said judgment is reproduced hereunder:

*“20. In the instant case, the amendment application was filed on 24-5-2007 to carry out the amendment by adding Paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. **Firstly, the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused.** Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem Khalnayakaru being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore, to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution.”*

(emphasis supplied)



22. The petitioners have highlighted that it was held in the said case that amendment cannot be permitted once cognizance is taken unless the amendment is of a curable legal infirmity which causes no prejudice to the other side. In the opinion of this Court, the same will be an erroneous reading of the aforesaid judgment. While the Hon'ble Apex Court was weighed by the fact that the Magistrate was yet to apply its mind on the facts of the case and take cognizance of the matter, however, the principle enunciated is that proposed amendment was not a formal one and the same was substantial in nature.

23. In the said case, the Hon'ble Apex Court placed reliance on the judgment of ***U.P. Pollution Control Board v. Modi Distillery* : (1987) 3 SCC 684** where the amendment of the name of the company was sought to be made and it was observed that the same was merely a technical flaw that could be easily cured by calling upon the appellant therein to make formal amendments. In view of the same, it was noted that an easily curable infirmity could be cured by means of a formal application even in absence of any specific provision in the Code. The relevant portion of the judgment is reproduced hereunder:

“18. Insofar as merits of the contention regarding allowing of amendment application is concerned, 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 [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] 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: (SCC pp. 659-60, para 6)



'6. ...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 accused concerned 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.'

19. What is discernible from U.P. Pollution Control Board case [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] is that an 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."

(emphasis supplied)

24. While a bald averment is made that grave prejudice would be caused to the petitioners if the substitution of the new name of the complainant company is allowed, however, in the opinion of this Court, mere use of the old name of the complainant company is not a relevant aspect as the same is not likely to have any effect on the merits of the case. No cogent argument is made in relation to how the change in name will affect the case against the petitioners or as to how



their defence would be hampered by such a change. It is not the case of the petitioners that they have established their case in ignorance of the change in name of the complainant company as the said objection was raised at a very nascent stage. It is also relevant to note that the mere change in name does not alter or affect the rights of the company. Furthermore, the agreement between the complainant company and the accused company is not disputed. The change of the name of the complainant company is merely formal in nature and the same can be easily cured. The same also has no effect on the original nature of the complaint.

25. It is not disputed that the name 'Sab Miller India Ltd.' of the complainant company was changed to 'Anheuser Bursch Inbev Ltd.'. The mere filing of the complaint in the old name appears to be an oversight for which a party cannot be non-suited and left remediless.

26. The judgment in *Munish Kumar Gupta v. Mittal Trading Co.* (*supra*) is also not applicable to the facts of the present case as the change sought to be made is not substantial in nature.

27. It is stated that applications have been preferred for substitution of the authorised representative and change in the name of the complainant company. The same is seen to have also been allowed in Criminal Complaint No.10977/2018. The respondent company has evidently taken appropriate steps to cure the defects in the complaints.

28. It is incumbent on this Court to exercise its inherent jurisdiction to ensure substantial justice. In light of the same, considering that the petitioners have failed to show as to how they will be gravely prejudiced by a mere correction in the name of the company, quashing



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of the criminal proceedings merely on account of a technical error at this junction, when the signatures on the cheques in dispute have not been disputed and the claim of the complainant company has not been adjudicated on merits, would be unmerited and it will frustrate the ends of justice.

29. However, considering that the complaints have been pending since the year 2018, this Court considers it apposite to request the learned Trial Court to expedite the proceedings.

30. In view of the aforesaid discussion, the present petitions are dismissed in the aforesaid terms.

31. Pending applications also stand disposed of.

32. A copy of this judgment be placed in all the matters.

AMIT MAHAJAN, J

DECEMBER 16, 2024