



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 CRIMINAL WRIT PETITION NO.328 OF 2025

1. Sneha Maheshmukar Kamble
Age-40 years, Occu-Household,
R/o. Quarter No. 875, Old CRPF Barrack,
Bhusawal, Tq. Bhusawal Dist. Jalgaon
 2. Maheshmukar Damodar Kamble
Age-45 years, Occu-Service,
R/o. Quarter No. 875, Old CRPF Barrack,
Bhusawal, Tq. Bhusawal Dist. Jalgaon
- ...**PETITIONERS**
[Accused After
amendment]

VERSUS

Smt. Kaushalyabai Milind Magar,
Age-60 years, Occu-Pensioner,
R/o. Quarter No. 875, Old CRPF Barrack,
Bhusawal, Tq. Bhusawal, Dist. Jalgaon

...**RESPONDENT**
[Ori. Complainant]

Mr. B. B. Kulkarni, Advocate for the petitioner
Mr. Shaikh Mohammad Naseer, Advocate for the respondent

CORAM : ABHAY J. MANTRI, J.

DATE : 20th NOVEMBER, 2025

ORAL JUDGMENT:

1. Heard. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the respective parties
2. By this petition, the petitioners are challenging the order dated 28-08-2024, passed by the learned Judicial Magistrate First Class, Bhusawal (for short the '*learned Magistrate*'), whereby the learned Magistrate allowed the application for amendment filed by

the respondent to correct the names of the petitioners in the original complaint.

3. The thrust of the argument of the learned Advocate for the petitioners is that there is no provision in the Criminal Procedure Code (for short '*Cr.PC.*') to permit the respondent to amend the complaint. Under the proposed amendment, the respondent intended to change the identity of the accused persons, which is not permissible in law and would therefore certainly prejudice the rights of the petitioners and ultimately result in a miscarriage of justice. As such, he submitted that the passing of the impugned order is perverse and illegal and liable to be set aside.

4. To buttress his submission he has relied on the judgment of the Hon'ble Supreme Court in *S. R. Kumar Vs S. Sunaad Raghuram [2015] 9 SCR 1105* and pointed out para 7, 10 and 18 of the said judgment and argued that in view of the law laid down in the said judgment '*the amendment sought to be made in the complaint does not relate either to a curable infirmity or same cannot be corrected by a formal amendment and if the amendment is permitted, it would cause prejudice to the rights of the petitioners*'. As such, he has submitted that in view of the said observations, the petition be allowed.

5. *Per contra*, the learned Advocate for the respondent strenuously opposed the petition and contended that by filing the application, the respondent only sought permission to correct the names of the petitioners, which were incorrectly recorded. Therefore, it cannot be said that said amendment is impermissible; on the contrary, said amendment is curable by means of a formal nature, and thus, the learned tribunal has rightly allowed the application. He further argued that, because the names of the persons were incorrectly mentioned, their identities cannot be changed. The summons was served on the petitioners only at the address given in the complaint. The petitioners did not dispute that they are residing at the said address. Therefore, he submitted that the passing of the impugned order is just and proper and no interference is required in it in the writ jurisdiction.

6. To buttress his submission, he has relied on the judgment in *Amol Shripal Sheth Vs Hari Om Trading Co. and others, 2014 (6) Mh. L. J. and Bansal Milk Chilling Centre Vs Rana Milk Food Pvt. Ltd Law (SC) 2025-7-77* and submitted that in view of the dictum laid down by this court as well as the Apex Court, the amendment is permissible in the complaint, if the same is of a formal nature. As such, he urged the dismissal of the petition.

7. I have gone through the impugned order and record. At the outset, it appears that the petitioners do not dispute that they are residing at the address given in the complaint. Their only grievance is that by filing the amendment application, the complainant wants to change the identity of the accused persons. However, I do not find substance in his contention, as the complainant categorically stated in her complaint, as well as a verification statement that *“she is residing with her daughter at the address given in the title clause, and the accused persons are residing adjacent to her daughter’s house.”*

8. On perusal of the address of the complainant and the petitioners/accused, it categorically demonstrates that they are residing in Railway Quarters No. 875, Old CRPF Barrack, Bhusawal. Similarly, the complainant resides with her daughter in Railway Quarters No. 875, Old CRPF Barrack and may therefore not be aware of the correct names of the accused persons. In the complaint, she has mentioned the accused No. 1’s name as ‘Neha’ ‘Balu’ Kamble, but her name is actually ‘**Sneha**’, and her husband's name is ‘Maheshkumar’. Both petitioners do not dispute that their surname is ‘**Kamble**’ and therefore, to correct the names of the accused persons, the complainant had moved the application. Therefore, it cannot be said that by filing the application, the complainant wants to change the identity of the accused persons. It further appears from the order

passed by the learned Magistrate that “*the complainant identified the accused, Sneha, from her photographs on the Aadhaar card*”. In such an eventuality, it cannot be said that permitting the complainant to carry out the amendment would cause serious prejudice to the rights of the petitioners.

9. Perused the judgment in *Amol Shripal Sheth (supra)*. I want to reproduce para 16 of the said judgment, which reads as follows:

“16. The aforesaid provisions of [Cr. P. C.](#) show that if the Magistrate takes cognizance of the offence, he needs to ascertain as to who has committed the offence. In the case like present one, the complainant may not be in a position to get the correct name of the accused. A tight schedule of time limit created by the provisions of [N.I. Act](#) also needs to be kept in mind in such a case. Due to such a tight schedule of time limit, which is mandatory in nature, in many cases, the complainant may not be able to get the complete and correct name of the responsible persons for dishonour of the cheque at the time of filing the complaint. So in view of these circumstances and the aforesaid provisions of [Cr.PC.](#), the Magistrate can take cognizance of the offence, and he may issue process even against the persons whose name is not correctly described by the complainant. If after appearance of accused, the defence taken like in the present case is there, the Magistrate needs to ascertain as to whether there is doubt about the identity of the person described by the complainant in the complaint and as to whether the person who appeared as accused is the same or not. That can be done even during the trial. If the accused points out the defects in the name given in the complaint, but he is not in a position to show that he is a different person, he cannot take benefit of such defects. There is no provision in [Cr.PC.](#) providing for dismissal of the complaint due to such a defect. Complaint can be returned only under [section 201](#) of Cr. P. C., if the Magistrate finds that he is not competent to take cognizance of such a case. So, if there is no doubt about the identity of the accused described in the title and in the body of the complaint, such a person cannot get an acquittal by taking such a defence. For such a defence, the complaint also cannot be Cri. Applns. 1346,1347, 1348/05 dismissed under

section 203 of Cr. P. C. The burden to establish the identity of the accused and the involvement of the accused in the crime is always on the prosecution, and the opportunity to establish both these things cannot be taken away from the prosecution if there is such a defect. Thus, in one way, it can be said that the accused does not get any benefit due to such a defect. Then, the question arises as to what needs to be done or what can be done in such cases to correct such a mistake.”

10. I would also like to reproduce paragraphs 17 & 18 of the judgment in *Bansal Milk Chilling Centre (supra)* as under:

“17. We have carefully perused the complaint and the application for amendment. The amendment was moved at a stage when, after summons being issued to the respondents, the chief examination of the complainant had concluded and when cross-examination was awaited. The amendment made is also only with regard to the products supplied. According to the complainant, while what was supplied was “milk”, by an inadvertent error, “Desi Ghee (milk products)” was mentioned. The error which occurred in the legal notice was carried in the complaint also.

18. On the facts of the present case and considering the stage of the trial, we find that absolutely no prejudice would be caused to the accused/respondents. The actual facts will have to be thrashed out at the trial. As to what impact the amendment will have on the existence of debt or other liability is for the Trial Court to decide based on the evidence. It was a curable irregularity which the Trial Court rightly addressed by allowing the amendment. It could not be said that by allowing the amendment at a stage when the evidence of the complainant was incomplete, failure of justice would occasion.”

11. I would also like to reproduce para 18 of the judgment in *S. R. Kumar (supra)* as under:

“18. What is discernible from the U.P. Pollution Control Board’s case 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 an 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 a likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.”

12. Having gone through the facts of the case as well as the law laid down in the above judgments, it clearly appears that the amendment sought to be made by the respondent/complainant is raised to simple corrections of the names of the accused persons, which were incorrectly mentioned in the complaint. Therefore, it can be said that said amendment is formal in nature and curable. Moreover, it does not appear that said amendment is not related to a curable infirmity or that the same cannot be corrected by a formal amendment, or it would cause prejudice to the other side. Therefore, in my view, the law laid down in *Amol Shripal Sheth (supra)* and *Bansal Milk Chilling Centre (supra)* is applicable in the case at hand. However, the mandate laid down in *S. R. Sukumar (supra)* is of hardly any assistance to the petitioners in support of their contention; on the contrary, it would be helpful to the respondent. As such, I do not find substance in the contention of the learned Advocate for the petitioners that the judgments in *Amol Shripal Sheth (supra)* and *Bansal Milk Chilling Centre (supra)* are not applicable in the case at hand.

13. The learned Magistrate considered the material on record and, in the order, categorically observed that “*the proposed*

amendment is of a formal nature and it is necessary for deciding the case on merit.” Accordingly, the application was allowed. The order passed by the learned Magistrate appears just and proper. The petitioners failed to point out that the findings recorded by the learned Magistrate are illegal or perverse to interfere with them in writ jurisdiction. Hence, I do not find substance in the contentions of learned counsel for the petitioners to interfere in the impugned order.

14. As a result, the criminal writ petition, *being devoid of merit, stands dismissed*. The rule is discharged. No order as to costs.

15. At this stage, the learned Advocate for the petitioners requested to continue the interim relief for a period of four weeks. On being asked, the learned Advocate for the petitioners submitted that the next date in the matter is 20-12-2025. Therefore, I do not think it is proper to continue the same for another four weeks, as the next date is after that.

16. Apart from this, as discussed above, I do not find substance to continue the interim relief for a further period of four weeks, as I have passed the detailed order and held that no illegality or perversity appears in the impugned order. But prima facie, it seems that the petitioner, to protract the proceedings before the learned Magistrate, urged a stay of the impugned order for a further period of four weeks. Hence, his request for continuation of interim relief is

rejected.

17. The learned Advocate for the petitioners further requested to take the documents produced by the parties on record. I do not think it proper to take those documents on record, as they are not relevant to determining the question at issue. Hence, those documents are not required to be taken on record. Therefore, his request is rejected. The documents should be returned to the parties.

[ABHAY J. MANTRI, J.]

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