



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 823 OF 2024

Monal Kuldeep Chordiya

..VS..

Vinod Namdevrao Kothewar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.J. Topale, Advocate for petitioner.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 15th JANUARY, 2025

1. By this writ petition, the petitioner has challenged the order dated 15.06.2024 passed below Exhibit-93 by the Judicial Magistrate, First Class, Court No.2, Arvi, District Wardha in S.C.C. No.2413/2016, allowing the amendment application of the complainant.

2. The petitioner is an original accused in SCC No.2413/2016, filed on the basis of Cheque No. 000636 of Rs.7,31,522/- alleged to have been issued in favour of Krushi Utpanna Bazar Samiti, Arvi by the Ariyant Cotton Company towards discharged the legal and enforceable liability. The same was dishonoured and for demand of the above said amount, a notice was issued on 24.10.2016. After the receipt of notice, also the amount was not paid and, therefore, the complaint was filed. During pendency of the complaint, an amendment application was filed contending that initially the

complaint was filed on behalf of Krushi Utpanna Bazar Samiti through the previous Secretary namely Vinod Namdevrao Kothewar however, since Vinod Kothewar has now resigned and the resolution is passed in the name of Mr. Chetan Vilas Nistane as the incharge Secretary and therefore, his name be replaced and the amendment was sought by replacing the name of complainant Vinod Namdevrao Kothewar to the Krushi Utpanna Bazar Samiti through the incharge Secretary Chetan Vilas Nistane, aged about 36 years, resident of Arvi, District Wardha. A reply was filed by the accused and the amendment application was opposed on the ground that it would cause serious prejudice to the defence of the accused.

3. Learned Judicial Magistrate, First Class, after hearing both the sides and after considering the decisions which are placed on record by the accused, allowed the application by observing that now the Secretary of the APMC has changed and the name of the subsequent secretary is to be included and due to the technical reasons, the application cannot be rejected and allowed the application by observing that no prejudice is caused to the accused.

4. Heard learned Counsel for the petitioner. None present for the respondent though served.

5. From the perusal of the complaint it reveals that the complainant is the registered Society registered under the Registration Act as well as the Co-operative Societies Act. Previously, Vinod Kothewar was appointed as a Secretary of Krushi Utpanna Bazar Samiti. The title clause of the complaint shows that complaint was filed by Vinod Namdevrao Kothewar, a Secretary of Krushi Utpanna Bazar Samiti, Arvi. As per the recitals of the complaint, the accused, who is the proprietor of the Ariyant Cotton Company, Arvi had taken part in the business activities and towards the legal and enforceable debt, he has issued the cheque as a marketing fee to the APMC of Rs.7,31,522/-. Though, the cheque was issued by the accused/petitioner, but no provision was made to honour the cheque. On presentation of the cheque, the said cheque was dishonoured and returned with the endorsement of "funds insufficient". Therefore, a notice was issued to the present petitioner and after receipt of notice, also he has not paid the amount, hence the complainant constrained to file complaint.

6. It is submitted by the learned Counsel for the petitioner that in view of Section 142 of the Negotiable Instruments Act, 1881, the complaint is to be filed by the authorized person however, the complaint was filed by the individual person and which was not maintainable, and now the said mistake is attempted to be corrected by the amendment and due to which the serious prejudice will cause to the present petitioner. In support of his

contention, he placed reliance on two decisions i.e. *Harikisan Vithaldasji Chandak & Ors., Vs. Syed Mazaruddin Syed Shabuddin through his LRs. and Ors.*, reported in *2023 SCC OnLine 955* and *Munish Kumar Gupta Vs. Mittal Trading Company*, reported in *2024 SCC OnLine SC 1732*.

7. In view of observation in the above two judgments, learned Counsel for the petitioner submitted that serious prejudice would be caused to the present petitioner if the amendment is allowed and the primary question that needs to be considered and addressed would be the maintainability of the complaint. In view of that the order passed by the learned Judicial Magistrate, Arvi deserves to be quashed and set aside.

8. Perused the complaint as well as the order below Exhibit-93 passed by the Judicial Magistrate, First Class, Court No.2, Arvi. In view of Section 142 of the N.I. Act which deals with the cognizance of the offences, which reads as under :

“142. Cognizance of offences.—[(1)] *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]”

9. The title clause of the complaint shows that the complaint was initially filed by the Vinod Namdevrao Kothewar and the first para of the complaint itself shows that complainant is the Krishi Uttpan Bazar Samiti and Vinod Kothewar was appointed as a Secretary of Krishi

Uttpan Bazar Samiti, Arvi, and on behalf of the APMC, he has filed the complaint. Now, the amendment application is filed only for replacing the name of the Secretary as the earlier Secretary has resigned therefore, the contention of the learned Counsel for the petitioner that initially the complaint was filed through the individual person and now the attempt is made to make the APMC as a party and it would cause a serious prejudice. As far as the contention of the learned Counsel for the petitioner by relying on the judgment of ***Munish Kumar Gupta*** cited supra is concerned, the facts therein are not identical with the present case. In the cited case, the fact of the case shows that the complaint had been filed on 02.01.2013 and subsequently the respondent has tendered the evidence before the learned Trial Court, at that stage, claiming that inadvertently a typographical error had arisen with regard to mentioning the year of the cheque, the respondent had filed an application seeking amendment which was rejected. In the case of ***Harikisan Vithaldasji Chandak*** cited supra, wherein the issue was the deceased complainant presented the cheque for encashment through his bank namely Central Bank of India, Darwha, the bank informed the deceased complainant that the cheque was dishonoured on the ground that “the drawer had stopped the payment”. The deceased complainant had issued the notice and on receipt of the notice accused did not pay amount and therefore, deceased complainant filed the complaint. The learned Magistrate took the cognizance of the offence

and issued process against the accused persons and the complaint was fixed for recording of the evidence and thereafter the amendment application was filed and the proposed amendment was set out in paragraph 2 of the application. The sum and substance of the amendment application was that the relevant facts with regard to the vicarious liability of accused nos.1 to 4 remained to be pleaded due to the oversight. Thus, in both the cases the amendment was in the nature of changing the entire nature of the complaint.

10. As far as the present petition is concerned, which is only to the extent of replacing the name of the complainant, who was representing the APMC therefore, no prejudice is caused to the present petitioner and, therefore, there is no substance in the petition. In view of that, the petition deserves to be dismissed. Accordingly, the writ petition is **dismissed**.

(URMILA JOSHI-PHALKE, J.)