



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.864 OF 2024

PETITIONER : **Shiv Chatrapati Group of Infrastructure**, through
Dhanraj Ramaji Fuse,
Aged about 62 yrs, Occ. Business, R/o 45,
Mangaldham, Chaturang Apartment, Meher
Colony, Wardha Road, Nagpur.

..VERSUS..

RESPONDENT : Sumedh Sampatrao Kamble,
Aged about 59 yrs, Occ. Service, R/o
Vishwakarma Nagar, Road No.10, Nagpur.

Mr R. R. Prajapati, Advocate for Petitioner.
Mr V. A. Dahiware, Advocate for Respondent.

CORAM : **M. W. CHANDWANI, J.**

DATED : **2nd APRIL, 2025.**

ORAL JUDGMENT

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsels appearing for the parties.

3. By this petition, the petitioner challenges the order dated 22.03.2024 passed below Exhibit – 59 by the 8th Joint Civil Judge Senior Division and ACJM, Nagpur in Summary Criminal Case No.7280 of 2019, thereby allowing the application for amendment/correction in the complaint sought by the respondent – original complainant. The said order was carried in revision before the learned Additional Sessions

Judge-11, Nagpur and the same was confirmed. Feeling aggrieved with the order of the learned Trial Court as well as the order of the learned Additional Sessions Judge, this petition came to be filed.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent. Having gone through the material available on record including the complaint, application for amendment and the portion sought to be added to the complaint, it transpires that the complaint filed by the respondent against the petitioner was for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, alleging that the petitioner is the proprietor of Priya Co-Operative Housing Society and Shiv Chatrapati Group of Infrastructure. Process came to be issued against the petitioner, pursuant to which the petitioner appeared. The complainant examined himself as well as other three witnesses. Thereafter, an application vide Exhibit – 59 was filed seeking amendment to be incorporated in the complaint, which is reproduced here:

Add in Para No. 2

That, aforesaid agreement and Issar Chitthi dated 09.08.2014 was executed by the accused in the name of Priya Co-operative Housing Society.

Add in Para No. 5

That, the accused had issued aforesaid cheques from the account of Shiv Chhtrapati Group of Infrastructures. When complainant demanded cheques of Priya Co-operative Housing Society, accused told complainant that he doesn't have amount in Priya Co-operative Housing Society Account, hence he is giving cheques from Shiv

Chhtrapati Account and he is also a proprietor of the same.”

5. The learned Trial Court by relying on the judgments of *Maan Agro Centre vs. EID Parry (India) Ltd. and another, 2005 (2) Mh.L.J. 44* and *S R Sukumar vs. S Sunaad Raghuram, 2015 LawSuit (SC) 618,* allowed the amendment application of the complainant.

6. Mr. Prajapati, learned counsel appearing for the petitioner submitted that the application for amendment was filed after the complainant and three witnesses have been examined and they were put to the test of cross-examination by the petitioner. According to him, certain questions were put to the respondent. To counter these questions, the respondent filed the amendment application which came to be erroneously allowed by the learned Trial Court. According to him, the amendment application post cognizance cannot be allowed. He submitted that the amendment is not only an attempt to fill the lacuna in the complaint but will also cause serious prejudice to the petitioner as he has already opened his defence. Therefore, the orders of the learned Trial Court as well as the learned Additional Sessions Judge are erroneous and required to be set aside. To buttress his submission, he seeks to rely on the decision of this Court in the case of *Harikisan Vithaldasji Chandak and Others vs. Syed Mazaruddin Syed Shabuddin (dead through LRs),* in Criminal Application (APL) No.681 of 2013 decided on 28.04.2023.

7. Per contra, Mr. Dahiwale, learned counsel appearing for the respondent vehemently submitted that while allowing an amendment application, the test of prejudice is to be considered. According to him, the petitioner was well aware about the complainant's case. However, the complaint actually states that the cheque was issued by Shiv Chatrapati Group of Infrastructure and not Priya Co-operative Housing Society due to insufficient funds and the petitioner is the proprietor of both the entities. Moreover, the petitioner himself while cross-examining the respondent had sought the documents in this regard which are now being clarified through amendment. Therefore, no prejudice will be caused to the petitioner. Hence, he sought rejection of the petition.

8. A perusal of the complaint filed by the respondent before the learned Trial Court reveals that the petitioner is the Secretary of Priya Co-operative Housing Society and also the Proprietor of Shiv Chatrapati Group of Infrastructure. By way of amendment, the respondent sought to bring on record that the petitioner had issued the cheque from the account of Shiv Chatrapati Group of Infrastructure stating that he did not have sufficient funds in Priya Co-operative Housing Society. This was objected to by the petitioner before the learned Trial Court on the ground that it amounted to filling the lacuna in the complainant's case.

9. Let me state that the issuance of cheque by Shiv Chatrapati Group of Infrastructure is a matter of record in respect of which the

complaint was filed by the respondent before the learned Trial Court. The complaint also depicts that the agreement was entered into with Priya Co-operative Housing Society. Nothing new has been added except for the clarification that the accused/petitioner issued the cheque from the account of Shiv Chatrapati Group of Infrastructure instead of Priya Co-operative Housing Society. The amendment sought is regarding the petitioner informing the complainant that since he did not have sufficient funds in Priya Co-operative Housing Society, he provided a cheque from Shiv Chatrapati Group of Infrastructure. Thus, by amending the complaint, the complainant did not introduce a new case but merely provided clarification that the cheque from Shiv Chatrapati Group of Infrastructure's account was issued due to insufficient funds in Priya Co-operative Housing Society.

10. It is also pertinent to mention here that the petitioner posed a question to the respondent in cross-examination whether he had any document to show the amounts due towards Shiv Chatrapati Group of Infrastructure. The respondent replied that since there were insufficient funds in the account of Priya Co-operative Housing Society, the accused issued the cheque from the account of Shiv Chatrapati Group of Infrastructure. Thus, this fact is already clarified by the respondent during his cross-examination which is exactly what is being brought on record by way of amendment. It is not the case that new facts are being

incorporated into the complaint. Therefore, no prejudice will be caused to the petitioner for two reasons; firstly, the petitioner will have the opportunity to address this amendment through cross-examination if the complainant enters the witness box again to testify regarding the amended portion of the complaint. Secondly, it will be a matter of appreciation of evidence and he will be at liberty to argue during hearing of the trial to convince the Court that the amendment sought is an afterthought.

11. No doubt, in the case of *Maan Agro Centre* (supra), the amendment was allowed solely on technical grounds and the amendment was not sought to be incorporated into the body of the complaint. As far as the case of *S R Sukumar* (supra) is concerned, no ratio has been laid down by the Hon'ble Supreme Court that post cognizance stage amendment cannot be allowed, therefore, I do not find any substance in the argument of the learned counsel for the petitioner that the learned Trial Court as well as the learned Additional Sessions Judge wrongly relied on the case of *S R Sukumar* (supra).

12. The learned counsel for the petitioner attempted to draw support for his case from the judgment in the case of *Harikisan Vithaldasji Chandak* (supra). According to him, when the legal representatives of the deceased - complainant tried to incorporate the ingredients of vicarious liability of accused Nos.1 to 4 therein, which was

not incorporated earlier, this Court set aside the order of the learned Magistrate allowing to amend the complaint. Taking help of this judgment, learned counsel for the petitioner submitted that the amendment application ought not to have been allowed by the learned Trial Court. I have gone through the judgment of this Court, wherein this Court in para 19 of the judgment has set out the principles with regard to amendments in the complaint, which is reproduced here :

“19. The legal position is, therefore, well settled that the curable infirmity or defect can be removed by amending the complaint. The amendment cannot be allowed to change the basic core, crux and tenor of the complaint. The amendment, which results in prejudice to the other side, cannot be allowed. In other words, the amendment sought for to the complaint, if does not cause prejudice to the other side, the same can be allowed. When the amendment application pertains to addition of company or firm as a principal offender, after taking cognizance of the offence mentioned in the complaint by the Magistrate, by applying the principle of law that the Criminal Court takes the cognizance of the offence and not of the offender, cannot be made applicable and company or firm cannot be added. If the cheque is drawn on the account of company or firm, then the principal offender is the company or firm and therefore, in the absence of the company or firm being arraigned as accused in the complaint, the prosecution against the Directors or Partners cannot be maintained. It, therefore, goes without saying that if the company or firm is not a party to the complaint and the application is made to add the company or firm as a party to remove such defect, the same cannot be entertained.”

13. Considering the aforementioned legal position, wherein it has been held that amendments that alter the fundamental core, crux and tenor of the complaint are not allowed. I find that the present case stands distinct. Here, the respondent has already pleaded the existence of an

agreement with the petitioner in his capacity as Secretary. Moreover, the fact that the cheque was issued by the petitioner from the account of Shiv Chatrapati Group of Infrastructure is already a matter of record. Further, by way of clarification, the respondent has already stated that due to insufficient funds in the account of Priya Co-operative Housing Society, the cheque was issued from the account of Shiv Chatrapati Group of Infrastructure. Therefore, in my view, the learned Trial Court did not commit any error by allowing the amendment application. Whether to believe the statements made in the amended portion of the complaint and to accept the clarification given by the respondent during his cross-examination is a matter of appreciation. Consequently, I do not find merit in the argument of the learned counsel for the petitioner that the impugned orders warrant interference by this Court. Therefore, the petition does not stand and it is accordingly **dismissed**.

14. The rule is discharged in the above said terms.

(M. W. CHANDWANI, J.)