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Crl.O.P.Nos.28035 and 28174



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2025

CORAM :

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.28035 and 28174 of 2022

and

Crl.M.P.Nos.17243, 17246 and 17342 of 2022

Ashok Muthana

... Petitioner in both Crl.O.Ps.

Vs.

UMS Technologies Pvt. Ltd.
Represented by its General Manager,
Mr.T.Vasu Dev Anand,
Gopal Bagh, Avinashi Road,
Coimbatore – 641 018.

...Respondent in both Crl.O.Ps.

Prayer in Crl.O.P.No.28035 of 2022: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the proceedings pending in C.C.No.166 of 2001 on the file of the learned VI Judicial Magistrate, Coimbatore.

Prayer in Crl.O.P.No.28174 of 2022: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and set aside the order passed in CRP No.05/2020, dated 02.08.2022 by the 1st Additional District & Sessions Judge, Coimbatore against the order passed in CMP No.7972/2019, dated 03.12.2019 by the VI Judicial Magistrate, Coimbatore.

For petitioner
in both cases

Mr.C.Manishankar, Senior Counsel
assisted by Ms.L.Maithili

For respondents
in both cases

Mr.S.Mukunth, Senior Counsel
assisted by
Mr.H.Shabeer Ali
for M/s.Sarvabhauman Associates



COMMON ORDER

While Crl.O.P.No.28035 of 2022 has been filed to quash the proceedings pending in C.C.No.166 of 2001 on the file of the learned VI Judicial Magistrate, Coimbatore, Crl.O.P.No.28174 of 2022 has been filed to set aside the order dated 02.08.2022 passed in C.R.P. No.05/2020 by the 1st Additional District & Sessions Judge, Coimbatore which was filed challenging the order dated 03.12.2019 passed in CMP No.7972/2019 in C.C.No.166 of 2001 by the VI Judicial Magistrate, Coimbatore.

2. Since both the cases arise out of the same criminal complaint, with the consent of the learned counsel on either side, they are considered and decided by this common order.

Brief Facts:

3. The respondent/complainant filed a private complaint under Sections 138 and 141 of the Negotiable Instruments Act, 1881, against Fidelity Industries Limited/A1 and the Director/ Employees of A1 company are arrayed as A2 to A7. The petitioner, as the Managing Director of A1 company is arrayed as A2 representing A1 company. The complaint was in respect of dishonor of a cheque bearing no.296743, dated 20.12.1999 for Rs.26,05,781/- drawn on Vysya Bank



Limited, issued by A1 company and signed by the 6th and 7th accused, viz., K.Ramkumar and T.P.Sridhar, as authorized signatories of A1 company.

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4. According to the complainant, A1 company had received an inter-corporate deposit of Rs.25,00,000/- on 29.07.1997 from the complainant for a period of 90 days repayable with interest at 22% per annum. The inter-corporate deposit was renewed from time to time. The inter-corporate deposit was renewed on 28.07.1999 for a further period of 90 days, thereby, the deposit became repayable on 28.10.1999 and on 28.10.1999, a demand promissory note was issued for a sum of Rs.26,05,780/- in favour of the complainant. According to the complainant, A1 company had issued letters agreeing to return the inter-corporate deposit of Rs.26,05,780/- and a post dated cheque bearing no.296743 drawn on Vysya Bank Ltd., Mount Road, Chennai was issued on behalf of A1 company for the said sum and the same was signed by A6 and A7 as Authorised Signatories. The cheque had been presented for collection on 16.06.2000 before the State Bank of India, Industrial Finance Branch, Coimbatore and the said cheque was returned by the banker of A1 company, viz., the Vysya Bank Ltd., Mount Road, Chennai, with an endorsement "Insufficient funds" as per their return memorandum dated 20.06.2000. The complainant's bank viz., the State Bank of India, Industrial Finance Branch, Coimbatore issued a Debit Advice dated 21.06.2000 to the complainant. The complainant, on receipt of return memo, contending that the



accused had issued the above said cheque towards repayment of a legally enforceable debt, sent a statutory notice to the accused on 05.07.2000. A1, A2 and A4 to A7 received the said legal notice and sent a reply notice dated 14.07.2000. Since the amount was not paid, a complaint was filed before the Judicial Magistrate VI, Coimbatore and it was taken up as C.C.No.166 of 2001.

5. Mr.C.Manishankar, learned Senior Counsel appearing for the petitioner/A2 contended that the accused are tried for offence under Section 138 of the N.I. Act and in such case, the penal provisions have to be construed strictly and when there is defect in the statutory notice with regard to the cheque amount, the entire proceedings based on a defective statutory notice is illegal and thereby, further proceedings is an abuse of process of law and is liable to be quashed. He further submitted that at paragraph 1 of the statutory notice, the complainant had averred that the accused have received an inter-corporate deposit of Rs.26,05,780/-, whereas the fact remains that inter-corporate deposit was only Rs.25,00,000/- and further, in the statutory notice, there are also discrepancies with regard to the cheque amount; further, the complainant had also made some mistakes in the complaint and thereafter, he has made an application seeking amendment of the complaint in C.M.P.No.7972 of 2019 and the learned Magistrate, by order dated 03.12.2019, had dismissed the same, against which, the complainant had preferred Crl.R.C.No.5 of 2020 before the I Additional District



and Sessions Court, Coimbatore and the learned I Additional District and Sessions Judge had, without justification and without taking into consideration that such amendment goes to the root of the matter and alters the nature of the complaint, erred in allowing the revision causing serious prejudice to the petitioner.

6. By relying on the decision in **Kaveri Plastics Vs. Mahdoom Bawa Bahrudeen Noorul [2025 INSC 1133]**, learned Senior Counsel for the petitioner submitted that when there is defect in the statutory notice with regard to the cheque amount and the amount claimed, the entire proceedings based on such a defective statutory notice is illegal and thereby, further proceedings is an abuse of process of law and is liable to be quashed and further, when the permission to amend the complaint goes to the root of the matter causing prejudice to the accused, the order of the 1st Additional District & Sessions Judge, Coimbatore, permitting amendment of the complaint is also erroneous and has to be set aside.

7. *Per contra*, Mr.S.Mukunth, learned Senior Counsel appearing for the respondent/complainant, submitted that there is absolutely no mistake with regard to the description of the cheque or the amount mentioned in the cheque and claimed under the statutory notice; there was a mistake with regard to the inter-corporate deposit amount made in the accused company; the amendments which were sought to be made were to amend the name of the company, the person



representing the company and to amend the deposit amount which was erroneously stated in the complaint; this was done since the accused company was later converted to a Private Limited Company, the person representing the company had been changed and there was some discrepancy regarding the amount in the inter-corporate deposit made by the complainant with the accused company; the amendments sought to be made are curable infirmities which are formal in nature and they do not go to the root of the matter nor do they alter the scope of the complaint, resulting in prejudice to the accused causing miscarriage of justice; that apart, the petitioner (A2), A5 and A6 have also conceded before the trial court for allowing the amendments without prejudice to their defence and they having conceded before the trial court, cannot oppose the amendments at this stage.

8. The learned Senior Counsel for the respondent/complainant ultimately contended that the decision relied on by the learned Senior Counsel for the petitioner/A2 in **Kaveri Plastics** *supra* will not be applicable to the facts of this case since there is no discrepancy with regard to the description of the cheque and the amount mentioned in the cheque and the amount claimed under the statutory notice; the amendment sought is only with regard to the inter-corporate deposit amount made and that too, in the complaint and not in the statutory notice.



9. In support of his contention, learned Senior Counsel for the respondent/complainant relied on the decision of the Supreme Court in **S.R.Sukumar Vs. S.Sunaad Raghuram [(2015) 9 SCC 609]**.

10. Heard the learned Senior Counsel on either side and perused the materials available on record.

11. The relevant portion in the judgment of the Supreme Court in **Kaveri Plastics** *supra* relied on by Mr. Manishankar, learned Senior Counsel, is as follows:

“6.4.The proposition that the penal provision has to be construed strictly was again asserted by this court in *K.K. Ahuja v. V.K. Vora* [(2009) 152 Comp Cas 520 (SC); (2009) 10 SCC 48; (2009) 4 SCC (Civ) 1; (2010) 2 SCC (Cri) 1181; 2009 SCC OnLine SC 1229.] . In the context of provision of sections 141 and 138 of the Negotiable Instruments Act, it was observed in paragraph 17 of the judgment that penal statutes are to be construed strictly and that if conditions are scraped, the courts will insist upon strict literal compliance. It was stated that there is no question of inferential or implied compliance.

7. When the proviso (b) to section 138 stipulates the service of notice as one of the conditions for constituting the offence, and when the words “said amount” is incorporated in the language of the provision, it is the amount which is specifically referable to the amount recoverable under the cheque in question. Reading section 138 of the Act in a composite manner, the word “said amount” occurring in the proviso (b) is connectible with and operates in conjunction with language in the parent part of the



section “where any cheque drawn by a person. .. of any amount of money”.

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7.1. The words “said amount” and the phrase “any amount of money” have the same purport signifying the cheque amount. They operate hand-in-hand for the purpose of applicability of the section. The nexus or linkage between the two is enacted by the Legislature with a purpose of making the two to be the same and inseparable components, the former describing the offence and the latter denoting the condition to be fulfilled for constituting the offence.

8. From the aforestated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under section 138 of the Negotiable Instruments Act. In the event of the main ingredient not being satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under section 138 of the Negotiable Instruments Act would fall flat as bad in law. The notice to be issued under proviso (b) to section 138 of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1. A failure in above regard, namely when the cheque amount is not mentioned in the proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand



invalid in eye of law. The notice in terms of proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation.

8.2. The condition of notice under proviso (b) is required to be complied with meticulously. Even typographical error can be no defence. The error even if typographical, would be fatal to the legality of notice, given the need for strict mandatory compliance. And in the facts of the present case, the explanation that mentioning of wrong amount in the cheque was in the nature of typographical or inadvertent error could hardly be accepted, for the so-called mistake occurred and recurred in both the notices dated June 8, 2012 and September 14, 2012.

9. When the provision is penal and the offence is technical, there is no escape from holding that the “said amount” in proviso (b) cannot be the amount other than mentioned in the cheque in question for dishonour of which the notice is received, nor the mentioning of omnibus amount in the notice would fulfil the requirement. It has to be held that in order to make a valid notice under the proviso (b) to section 138 of the Negotiable Instruments Act, it is mandatory that “said amount” to be mentioned therein is the very amount of cheque, and none other.”

12. Likewise, the relevant portion in the judgment of the Supreme Court in **S.R.Sukumar**, *supra*, relied on by Mr. Mukunth, learned Senior Counsel, is as follows:



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"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)

13. Though there is no specific provision in the Cr.P.C. to amend the complaint or petition filed under Cr.P.C., the Supreme Court, in **S.R.Sukumar**, *supra*, has held that if an amendment sought to be made relates to a simple infirmity, which is curable by means of a formal application for amendment or by allowing such amendment, no prejudice would be caused to either side, such amendment could be made.

14. The above proposition has also been followed by the Supreme Court in a subsequent decision in **Bansal Milk Chilling Centre Vs. Rana Milk Food Private Limited and another [2025 SCC Online SC 1509]**. While dealing with the effect of such amendment, the Supreme Court held as follows:

"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



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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." (emphasis supplied)

15. Of course, in **Kaveri Plastics**, *supra*, the Supreme Court has held that the penal provision has to be construed strictly and that an error with regard to the amount of cheque and the amount claimed in the legal notice, even if typographical, would be fatal to the legality of the notice, given the need for strict mandatory compliance. Now, looking at the statutory notice in the case on hand, it is seen that there is no infirmity with regard to the description of the cheque, the amount of the cheque and the amount claimed in the statutory notice. The cheque is described as cheque bearing no.296743 drawn on Vysya Bank Ltd., Mount Road Branch, for the amount of Rs.26,05,781/-.

16. Now, so far as the amendments sought to be made in the complaint are concerned, the complainant, instead of the amount of Rs.25,00,000/-, which was deposited as an inter-corporate deposit, had wrongly mentioned that an amount of Rs.26,05,781/- has been deposited (which, according to him, was inclusive of interest), whereas, a perusal of the complaint shows no discrepancy with regard to the



description of the cheque and the amount claimed thereunder. Further, only on account of the change in the status of the company from a Public Limited Company to a Private Limited Company and the representative of the company having been changed, amendments had been sought in order to substitute the status of the company and the representative of the company.

17. Superadded, the amendments sought to be made by the respondent/complainant are genuine and *bona fide* ones, which are based on the alteration of the status of the company and the substitution of another employee of the company and to correct the amount regarding the inter-corporate deposit made with A1 company. In the opinion of this Court, these amendments sought to be made are curable infirmities and by allowing the said amendments sought, no prejudice would be caused to the petitioner/A2 resulting in miscarriage of justice. To be noted, the respondent / complainant has not attempted to introduce a new number or an amount which is totally different to the cheque in issue and there is no other discrepancy and all other particulars in the statutory notice and the complaint tally with one another.

18. In the light of the above discussion, this Court does not find any merit in both these criminal original petitions.



19. As a sequitur, these criminal original petitions fail and accordingly stand dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes / No



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- To
1. The VI Judicial Magistrate
Coimbatore
 2. The I Additional District & Sessions Judge
Coimbatore



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Crl.O.P.Nos.28035 and 28174



A.D. JAGADISH CHANDIRA, J.

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Common order in
Crl.O.P.Nos.28035 and 28174 of 2022

28.10.2025