



Crl.OP(MD)No.482 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.482 of 2024

and

CRL MP(MD)No.295 of 2024

Angel

... Petitioner

Vs.

Prem

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records of the impugned order passed in Crl.M.P.No.3596 of 2023 in S.T.C.No.45 of 2022 dated 11.10.2023 on the file of the learned Judicial Magistrate Court No.I, Padmanabhapuram, and set aside the same.

For Petitioner : Mr.R.J.Karthick

For Respondent : Mr.S.C.Herold Singh

ORDER

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 11.10.2023 made in Crl.M.P.No.3596 of 2023 in S.T.C.No.45 of 2022 on the file of the learned Judicial Magistrate No.I,



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Padmanabhapuram, and to set aside the same and for consequential reliefs.

2. Proceedings under Section 138 of the Negotiable Instruments Act, 1881, though summary in their object, are founded upon strict statutory preconditions, namely, the existence of a legally enforceable debt or liability, issuance of cheque towards such liability, dishonour, and service of a valid statutory notice within time. The complaint, the sworn statement/verification, and the statutory notice together form the foundational framework of prosecution.

3. At the same time, the criminal Courts are not powerless to permit correction of purely formal or clerical defects, provided such correction does not alter the nature of accusation, does not fill up a lacuna, and does not prejudice the defence. It is in this narrow zone, the present controversy arises.



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Case of the Prosecution:

4. The respondent/complainant filed a private complaint under Section 200 Cr.P.C., 1973, in S.T.C.No.45 of 2022 before the learned Judicial Magistrate No.I, Padmanabhapuram, alleging commission of offences under Sections 138 and 142 of the Negotiable Instruments Act, 1881. In substance, the complaint avers that the respondent is the sole proprietor of M/s. Balbi Traders and that the petitioner/accused demanded a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 21.07.2020 for improvement of her cashew nut factory and received the said amount through bank transfer, that on the same day a post-dated cheque dated 26.07.2020 was issued, that on presentation on 08.10.2020, it was dishonoured on 14.10.2020 with the endorsement "Account closed"; and that a statutory notice dated 21.10.2020 was issued calling upon the petitioner to pay within the statutory period, but the amount was not paid, necessitating the complaint.



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Case of the Petitioner:

5. The petitioner asserts that she never borrowed any loan from the respondent and never issued the cheque towards any such liability as alleged. The petitioner's further case is that the respondent is a money lender charging exorbitant interest and that blank cheques are allegedly obtained from various persons and misused for filing complaints by suppressing material facts. The petitioner states that one Mr. Sundara Palis conducted a cashew industry and the bank transactions were in the petitioner's name, that the petitioner used to hand over collections to the said person, that Mr. Sundara Palis died on 12.08.2020, and that the amount of Rs.5,00,000/- (Rupees Five Lakhs only) was allegedly settled by the petitioner with the respondent on 20.08.2021, whereupon the respondent allegedly handed over cheque leaf/leafs which the petitioner believed to be original. According to the petitioner, after receiving summons on 21.03.2022, she found that the cheque leaf handed over was a colour xerox of the original. A police complaint dated 21.03.2022 was allegedly given, later a petition under Section 156(3) Cr.P.C., 1973 was moved, and an FIR under Sections 417 and



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420 IPC was registered by the District Crime Branch against the respondent and investigation is stated to be pending.

6. During the pendency of S.T.C.No.45 of 2022, the respondent/complainant filed Crl.M.P.No.3596 of 2023 seeking to amend the entire third paragraph of the complaint, *inter alia* altering the description of the bank account particulars through which the amount of Rs.5,00,000/- (Rupees Five Lakhs only) was allegedly transferred. The learned Judicial Magistrate, by order dated 11.10.2023, allowed the amendment petition primarily relying upon the decision of the Hon'ble Supreme Court in **S.R. Sukumar v. Sunaad Raghuram**¹, holding that curable infirmities and minor errors may be permitted to be corrected even in criminal complaints, if no prejudice is caused. Challenging the said order allowing amendment, the petitioner is before this Court under Section 482 Cr.P.C., 1973.

Grounds for quash:

7. The principal grounds urged by the petitioner may be summarised thus:

¹ AIR 2015 SC 2757



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(i) The bank account number and source-transfer particulars are material facts forming part of the very transaction pleaded to constitute legally enforceable debt/liability; such particulars cannot be altered through amendment.

(ii) The complainant had already filed sworn affidavit/verification and entered the witness box; averments in sworn statement cannot be altered to suit convenience.

(iii) The proposed substitution is not a mere typographical correction but a material alteration going to the root of the complaint, especially in a Section 138 prosecution where the notice and complaint must be consistent.

(iv) Allowing such amendment at a later stage would enable filling up lacunae and would prejudice the defence, particularly when the petitioner's defence is repayment and alleged cheating by colour xerox cheque, which is intertwined with the bank transaction trail.



Submissions:

8. The learned counsel for the petitioner contended that the amendment petition does not seek a minor correction but seeks to replace the entire paragraph No.3 of the complaint containing the core assertion of transfer of funds and the account particulars; that the statutory notice and sworn statements allegedly contain the same particulars as in the original complaint and that the complainant has not sought amendment of those allied foundational materials, thereby revealing that this is a post facto attempt to cure a substantive defect.

9. It was further contended that the law in **S.R. Sukumar v. Sunaad Raghuram**² permits correction of curable, formal infirmities but does not permit alteration which changes the nature of the accusation or prejudices the accused, and that the present amendment seeks to change a material component of the cause of action.

10. The learned counsel for the respondent submitted that there was an inadvertent error in transcribing account particulars;

² AIR 2015 SC 2757



that the error occurred at the time of drafting; that upon change of counsel and verification, the error was noticed; that the amendment merely corrects the mistaken mention of the complainant's and accused's account numbers; and that no prejudice is caused because the liability, cheque, dishonour, and notice remain the same. It was submitted that the learned Trial Court correctly applied **S.R. Sukumar v. Sunaad Raghuram**³ and permitted correction of a minor/clerical error, and the petitioner can always contest the case on merits during trial.

11. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for Consideration:

12. The point that arises for consideration is whether the learned Judicial Magistrate was justified in allowing amendment of paragraph No.3 of the complaint in a prosecution under Section 138 of the Negotiable Instruments Act, 1881, by substituting bank account particulars and transaction narration, and whether such amendment is a “formal/clerical correction” or a “material alteration”

³ AIR 2015 SC 2757



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causing prejudice to the accused, warranting interference under Section 482 Cr.P.C., 1973?

Analysis:

13. It is true that there is no express provision in the Code of Criminal Procedure enabling amendment of a complaint. Nevertheless, the Hon'ble Supreme Court in **S.R. Sukumar v. Sunaad Raghuram** recognised that a criminal Court may, in appropriate cases, permit correction of a simple infirmity curable by a formal amendment, where no prejudice is caused to the other side.

14. The permissibility, therefore, is not absolute. The controlling tests that emerge are:

(a) whether the proposed change is purely formal/clerical and curable;

(b) whether it alters the substance of the complaint or changes the nature of accusation;

(c) whether it fills up a lacuna; and

(d) whether it causes prejudice to the accused.



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15. Tested on the above parameters, this Court is unable to characterise the present amendment as a mere formal correction. The complaint, as originally instituted, sets out a specific mode of transfer and specific account numbers to demonstrate the alleged advancement of Rs.5,00,000/- (Rupees Five Lakhs only). In a Section 138 prosecution, while the cheque is a central instrument, the complainant must still plead and ultimately prove that the cheque was issued towards a legally enforceable debt or liability. The narration regarding payment/advance and its banking trail is not an ornamental recital; it is part of the foundational narrative supporting the alleged liability.

16. The amendment sought is not confined to a stray digit or an obvious clerical slip; it seeks to replace the entire paragraph, thereby recasting the transaction narration. Even if the respondent's explanation is that the complainant's and accused's account numbers were interchanged by mistake, such interchanging, when embedded in the very paragraph pleading the advancement of money, cannot be treated as a harmless correction in every case.



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17. More importantly, the petitioner's defence, as projected, is not a bare denial. The petitioner asserts repayment and alleges that a colour xerox cheque leaf was handed over and that a separate criminal case has been set in motion against the complainant. Whether those contentions ultimately succeed is not for this Court to decide now. However, they demonstrate that the bank transaction particulars and the circumstances of the cheque assume significance in the defence strategy. In such a scenario, a belated recasting of the foundational paragraph risks causing procedural prejudice, if not substantive prejudice.

18. The learned Trial Court's order proceeds on the premise that "based on the case records, this becomes evident". At the stage of an amendment petition, the Court is not expected to conduct a mini-trial; yet it must be satisfied that the correction is truly formal and that the accused is not deprived of a valuable defence arising from the original pleading. This Court is also mindful that in prosecutions under Section 138, the statutory architecture is time-bound. The complaint, the statutory notice and the sworn verification form a composite foundation. If the complaint is altered



materially while the sworn statement/verification and statutory notice continue to carry the earlier particulars (as asserted by the petitioner), it creates an avoidable inconsistency and opens the door to the very mischief the criminal process must avoid, namely, shifting stands through amendments at later stages.

19. Therefore, while ***S.R. Sukumar v. Sunaad Raghuram***⁴ authorises correction of minor errors, it does not license amendment which substantially changes the factual foundation of the complaint, especially when such change is capable of impacting the defence, or where the proposed alteration cannot be said to be purely formal.

20. In the facts and circumstances of the present case, this Court is of the view that the impugned order permitting amendment of paragraph No.3 of the complaint, as sought, cannot be sustained. At the same time, this Court clarifies that setting aside the amendment order does not foreclose the complainant from establishing, during trial, the alleged transaction by admissible evidence, subject to law; nor does it curtail the petitioner's right to cross-examine and to establish her defence including the plea of

⁴ AIR 2015 SC 2757



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repayment and the allegations touching upon the cheque leaf, in accordance with law.

21. Criminal prosecution under Section 138 of the Negotiable Instruments Act, 1881, must remain faithful to statutory rigour and procedural fairness. While Courts may correct genuine clerical errors to advance justice, the process cannot be permitted to drift into a mechanism for recasting foundational facts midstream. The equilibrium lies in permitting formal corrections, but rejecting material alterations that risk prejudice and erode the discipline of pleadings in criminal law.

22. In the result, this Criminal Original Petition is allowed. The order dated 11.10.2023 passed in Crl.M.P.No.3596 of 2023 in S.T.C.No.45 of 2022 on the file of the learned Judicial Magistrate No.I, Padmanabhapuram, is set aside. The learned Judicial Magistrate No.I, Padmanabhapuram, shall proceed with S.T.C.No.45 of 2022 on the basis of the complaint as originally filed, uninfluenced by any observations made herein, and dispose of the same in accordance with law.



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23. It is made clear that both sides are at liberty to raise all contentions available to them on facts and law, including contentions relating to the statutory notice, proof of legally enforceable liability, and the petitioner's defence plea. Consequently, connected miscellaneous petition, if any, stands closed.

15.12.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

- 1.The Judicial Magistrate Court No.I,
Padmanabhapuram.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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