

CRM-M-2217-2025

1

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2217-2025

Judgment reserved on: 29.01.2025

Pronounced on: 15.02.2025

Kirpal Singh

...Petitioner

V/S

Harpreet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Dinesh Mahajan, Advocate
for the respondent.

HARPREET SINGH BRAR J.

1. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') is preferred by the petitioner for seeking quashing of order dated 26.11.2024 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Gurdaspur, whereby application of the petitioner for amendment of complaint in case bearing no. NACT/111/2020 filed under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter 'NI Act') titled as 'Kirpal Singh v. Harpreet Singh' has been dismissed.

2. Briefly, the facts are that the respondent issued a cheque, bearing No. 338572 dated 31.12.2019 for an amount of Rs. 8,50,000/- in favour of the petitioner-complainant which was dishonoured on presentation for encashment vide memo dated 01.01.2020 with the remarks- 'funds insufficient.' Thereafter, a legal notice dated 27.01.2020 was sent to the

respondent to call upon him to make the payment. However, the respondent failed to make the requisite payment and consequently the present complaint was filed.

3. During the pendency of the case, the petitioner filed an application dated 24.10.2024 (Annexure P-3) seeking amendment of the complaint by replacing the words “send his son” to “go” in the third line of para 4 of the same. The learned trial Court, vide order dated 26.11.2024 (Annexure P-5), dismissed the said application. Aggrieved by the same, the petitioner has approached this Court.

4. Learned counsel for the petitioner *inter alia* contends that the learned trial Court gravely erred in dismissing the application for amendment of the complaint since the mistake sought to be rectified is merely typographical in nature. The amendment is only to the extent that the petitioner incorrectly mentioned that the money was taken by the respondent for sending his son abroad whereas he took the money for himself. The factum of the issuance of cheque and the signature it bears is not disputed. The liability of the respondent is also not disputed. In such circumstances, allowing the application would have helped the Court to reach at the correct conclusion. Moreover, allowing the amendment sought would cause no prejudice to the respondent.

5. *Per contra*, learned counsel for the respondent submits that there is no provision in the Cr.P.C that allows for the application for amendment of complaint. Further, the amendment sought pertains to a serious infirmity that goes to the root of the matter and as such, cannot be

allowed. Additionally, the petitioner had on an earlier occasion moved a similar application seeking amendment which was allowed by the learned trial Court. Resorting to it again is just an attempt by the petitioner to fill up the lacunae and delay the proceedings of the court intentionally in order to harass the respondent.

6. Having heard learned counsel for the parties and perusing the record of the case, it transpires that originally para 4 of the complaint (supra) read as follows:

“That accused in the month of March, 2019 requested to the complainant to advance Rs. 10,00,000/- as friendly loan as the accused needed the money to send his son abroad i.e. Canada”

Pertinently, the same allegation was levelled by the petitioner in the legal notice dated 27.01.2020 sent by him to the respondent.

7. Allowing the proposed amendment to paragraph 4 of the complaint would fundamentally alter the factual matrix of the case and cannot, by any stretch, be categorized as a mere typographical correction. The original wording explicitly states that the loan was sought for the purpose of "sending the respondent's son abroad," whereas the amendment seeks to replace it with the word "go," which significantly changes the context of the alleged transaction. Such an alteration is not a minor or technical modification but strikes at the very root of the case, as it directly affects the nature of the representation made by the respondent at the time of seeking the loan.

8. Permitting such a change would also create the potential for serious prejudice to the respondent. For instance, if it were to later emerge

that the son of the respondent was already abroad at the relevant time, the original assertion, that the loan was required for sending him abroad, would stand contradicted, which could have been a material aspect weighing against the case of the petitioner. However, by altering the language the petitioner seeks to cure a potential infirmity in the narrative of the prosecution, thereby attempting to fill a lacuna. This is impermissible in law, as amendments to pleadings cannot be allowed when they fundamentally reshape the case in a manner that alters its core foundation or prejudices the defense. Fairness and procedural propriety demand that the case of the petitioner stand or fall on its original assertions and evidence, without the benefit of retrospective tailoring.

9. A two Judge bench of the Hon'ble Supreme Court in **S.R. Sukumar v. S. Sunaad Raghuram (2015) 9 SCC 609**, speaking through Justice R. Banumathi, the following was held:

*“17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In **U.P. Pollution Control Board v. Modi Distillery and Ors., (1987) 3 SCC 684**, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-*

“...The learned Single Judge has focused his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the

controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery.... Furthermore, the legal infirmity is of such a nature which could be easily cured..."

18. What is discernible from the U.P. Pollution Control Board's case is that 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."

10. In the same vein, the Hon'ble Supreme Court in ***Munish Kumar Gupta vs. M/s Mittal Trading Company, 2024 SCC OnLine SC 1732*** dealing with an amendment application with regard to an inadvertent typographical error in mentioning the year of the cheque, held that the complainant consistently recorded the cheque date as 22.07.2010 right from the stage of issuing the notice demanding payment, in the complaint, and in the evidence presented as well. All supporting documents also reflected this date. Even if an amendment was allowed in order to change the cheque date to 22.07.2012, the existing evidence, which is consistent in mentioning 2010, would contradict the amendment, making such a correction unjustified. Since the date of the cheque is also crucial for determining compliance with the statutory notice period under the Negotiable

Instruments Act, 1881, and for assessing whether the issuer had sufficient funds in the account at that time, the requested amendment was denied.

11. In view of the discussion above, the present petition is dismissed and order dated 26.11.2024 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Gurdaspur, is upheld.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

15.02.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No