

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.2041/2015

Ramkumar

Vs.

B.N. Oils Pvt. Ltd. & another

Shri Bhaskar Agrawal, learned counsel for the applicant.

Shri Prateek Maheshwari, learned counsel for the respondent.

ORDER

(Passed on 02/09/2015)

This application under section 482 Cr.P.C. is directed against the order passed by the learned Judicial Magistrate First Class in Criminal Case No.9924/2010 dated 11.02.2015 by which the learned Magistrate dismissed an application filed by the accused/petitioner under section 245(2) Cr.P.C. for discharging him in the case pending against him under section 138 Negotiable Instrument Act and the second application filed by the respondent No.1 for amendment of the complaint which was allowed.

2. The facts giving rise to this application are that the petitioner is facing a trial under section 138 Negotiable Instrument Act. In the cause-title of the complaint, his name was written as Ram Kumar S/o Babulal Agrawal while the name of his father is

Dau Dayal Agrawal. The summons were sent describing him as he was described in the complaint which was received by him and then he appeared before the learned Magistrate. At the stage of accused statement this mistake was disclosed and then the application under section 245(2) Cr.P.C. was filed for discharging him. Simultaneously, another application for amending the complaint was also filed.

3. The learned Magistrate placed reliance on the judgment of Hon'ble Apex Court in case of **Adalatprasad vs. Roopmal Jindal; 2004(4) MPLJ 1 SC** and held that he has no power to review his own order dismissed the application under section 245(2) Cr.P.C. and placing reliance on judgment of this Court in case of **Chandrapal Singh vs. Ashol Layland; AIR (2012) M.P. 302** he allowed amendment of the cause-title of the complaint treating it a typographical error. The learned Magistrate also observed that the complaint was filed on 06.05.2010. The present applicant has been facing the trial after he appeared before the Magistrate. He never took any objections and only at the stage of accused statement the objections was raised.

4. After hearing both the counsel, this Court is of firm opinion that no interference is called for in the impugned order, because the order is a revisable order especially under section 245(2) Cr.P.C. Without filing any revision, the applicant directly

approached this Court which is not permissible when alternative remedy is available.

5. Coming back to the merit of the case, so far as the application under section 245(2) Cr.P.C. is concerned, the applicant signed cheque in question on behalf of Madhya Bharat International Pvt. Ltd. which is a registered company and not in a personal capacity. Therefore, the identity of the person cannot be disputed. Only when he is the authorized signatory on behalf of accused No.1 Madhya Bharat International Pvt. Ltd. then only he can sign the cheque. In this view of the matter, his identity is not in question. Similarly, the fact remains that after facing the trial for such a long period, he acquiesced so far as the mistake in the cause-title of the complaint is concerned and, therefore, no interference is also needed on this ground.

6. Regarding the amendment in the cause-title, this amendment in no way adversely prejudice the present applicant. It was only a typographical error as pointed out earlier. He is authorized signatory of the cheque on behalf of accused No.1. It is not his case that signature on the cheque is not his signature and, therefore, merely his father's name was wrongly stated in the cause-title of the complaint. No benefit can be given to him for this purely typographical error.

7. Accordingly for the reason that the applicant directly approached this Court without approaching the revisional court under revisional jurisdiction and also on merit as well, this application is devoid of any force and liable to be dismissed. Accordingly, the application is dismissed.

(ALOK VERMA)
JUDGE