

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 26th OF JULY, 2022

MISC. CRIMINAL CASE No. 35101 of 2022

Between:-

**BHUPENDRA SINGH THAKUR, S/O SHRI
MADAN SINGH THAKUR, AGED ABOUT 36
YEARS, R/O THAKUR KA BADA,
GANGANAGAR, TRIPURI CHOWK, GARHA
POLICE STATION, GARHA JABALPUR
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AJAY KUMAR SHUKLA - ADVOCATE)

AND

**UMESH SAHU, S/O SHRI UMASHANKAR
SAHU, AGED ABOUT 33 YEARS, R/O 1092,
GUPTA NAGAR, GARHA POLICE STATION
GARHA, DISTRICT JABALPUR (MADHYA
PRADESH)**

.....RESPONDENT

(NONE)

.....
*This application coming on for admission this day, the court
passed the following:*

ORDER

This petition under Section 482 of the Cr.P.C has been filed for quashment of order dated 13.05.2022, passed in Criminal Revision No.96/2022, passed by the Additional Sessions Judge/Special Judge, Special Court (Electricity Act, 2003) Court No.9, Jabalpur, Madhya Pradesh whereby order dated 05.01.2022, passed in SC NIA No..185/2015 (Umesh Sahu Vs. Shri Bhoopendra Singh Thakur) by

Judicial Magistrate First Class, Jabalpur has been affirmed.

2. It is submitted by learned counsel for the petitioner that respondent/complainant filed an application under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "NI Act") before the learned JMFC, Jabalpur alleging that the complainant had given Rs.6.00 lacs (Rupees Six Lac) in cash to the accused on 05.02.2015. In turn applicant had given a cheque of Rs.6.00 lac (Rupees Six Lac) to the complainant to be drawn at Punjab National Bank. When respondent/complainant presented the cheque, same was returned dishonored with a note "Account Closed". Respondent/complainant filed complaint dated 15.12.2018 Annexure A/1. It is further submitted that on 02.12.2021 during the pendency of the complaint respondent/complainant moved an application for amendment in the complaint on the ground that by mistake name of Punjab National Bank has been mentioned in place of HDFC Bank. Therefore, he be permitted to incorporate incorporate "HDFC Bank" in place of "Punjab National Bank". Copy of the amendment application for amendment is Annexure A/2. Learned JMFC allowed the amendment application despite petitioner/accused objection that amendment would change the nature of the complaint.

3. It is submitted by learned counsel for petitioner that notice was issued by the complainant in the name of Punjab National Bank and same is clearly demonstrated in notice Exhibit P/3. Exhibit P/2 is on the basis of HDFC Bank. It is also submitted by learned counsel for the applicant that there is no provision in the Code of Criminal Procedure to incorporate the

amendment. In his deposition before the trial Court complainant has mentioned that cheque was of Punjab National Bank. The amendment application was filed to meet out the deficiency caused in averments of complaint against the provisions of Code of Criminal Procedure. Despite all the objections raised by the petitioner/accused learned JMFC allowed the amendment application and criminal revision filed against the order of learned JMFC too has been dismissed by ASJ Court which is against the provisions of law. Hence, the order passed by the Courts below are not only arbitrary but also unjust, unreasonable and beyond its jurisdiction. Therefore, it has been prayed that aforesaid orders passed by the Courts below being illegal and bad in the eyes of law be set aside.

4. To buttress his argument, learned counsel for the petitioner has placed reliance on a case law of *Gokuldas Vs. Atal Bihari & Another*, reported in (2017) 4 MPLJ 73 passed by a coordinate bench of this Court.

5. I have heard learned counsel for the petitioner.

6. It is undisputed that there is no specific provision in the Code of Criminal Procedure dealing with the amendment of the complainant. At the same time, there is also no bar under the Cr.P.C against permitting a complainant to amend his complaint. Therefore, the question arises whether a complainant desiring to amend or modify the complaint can be permitted to do so? If yes, then till what stage and to what extent the criminal complaint can be amended.

7. In this case, on a perusal of the complaint Annexure A/1, it is revealed that there is no dispute about cheque number and the amount

filled therein. The only dispute is about the name of bank because as per para 2 of the complaint cheque was drawn on Punjab National Bank whereas by moving amendment application it was prayed that name of HDFC Bank be incorporated in place of Punjab National Bank. In ***U.P. Pollution Control Board Vs. Modi Distilleries***, reported in (1987) 3 SCC 684 the name of the accused company was wrongly mentioned in the complaint as Modi Distilleries instead of Modi Industries Limited, which was sought to be amended. The Apex Court considered the same as mere curable illegality and observed as under:

"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 paragraph 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 Messrs Modi Industries Limited, the Company owning the industrial unit, in place of Messrs Modi Distillery.....Furthermore, the legal infirmity is of such a nature which could be easily cured"

8. It is undisputed fact that along with complaint, the respondent had filed the cheque bearing number 434510 of HDFC Bank. In this case there is no dispute about the cheque number. The only dispute is about the mentioning the name of bank wrongly in complaint as Punjab National Bank instead of HDFC Bank. The Supreme Court in case of ***S.R.Sukumar Vs. S. Sunaad Raghurav***, reported in (2015) 9 SCC 609 was of the view that if the amendment sought to be made relates to simple infirmity, which is curable by means of formal amendment and by allowing

such amendment, no prejudice would be caused to the other side, notwithstanding the fact that there is no enabling provision of the Cr.P.C for entertaining such amendment, the Court may permit such an amendment to be made. In fact Supreme Court has held as under:

"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."

9. In **S.R. Sukumar** (*supra*) despite noting that amendment sought to be made in the complaint is not formal in nature but substantial, the Hon'ble Apex Court upheld the orders of the Courts below permitting the amendment to the complaint. In this case it was observed by the Supreme Court that the amendment sought to be made did not change the original nature of the complaint and no prejudice was caused to the accused by amendment in question.

10. In the case in hand, there is no dispute about cheque number and its issuance by the petitioner. The statutory notice was also issued in respect of Cheque No.434510. However, by mistake it appears that in the complaint name of bank has been mentioned as Punjab National Bank in place of HDFC Bank. In these circumstances this court is of the considered view that the mistake is a simple infirmity which is curable by

means of formal amendment, and by allowing such amendment, no prejudice would be caused to the applicant as there is no dispute about the issuance of cheque of HDFC bank by the petitioner/accused and same was annexed with complainant at the time of filing of complainant.

11. So far as the judgment relied upon by the petitioner, passed in the case of *Gokuldas (supra)* is concerned, the same is distinguishable on facts. In the case of *Gokuldas (supra)* statutory notice was issued for Rs.43,000/-, whereas as per the averment made in the complaint it was affirmed that complaint has been filed on the ground that a cheque of Rs.4,30,000/- was issued in lieu of repayment of Rs.4,30,000/- which was taken by the complainant and as it stood bounced, therefore, the applicant has committed an offence under Section 138 of the NI Act, whereas notice under Section 138 of the Negotiable Instruments Act was issued on the ground that a cheque of Rs.43,000/- in lieu of Rs.43,000/- was taken by the applicant and payment of Rs.43,000/- was made. In the present case there is no dispute about cheque number or the amount of cheque. Therefore, applicant gets no benefit from the *Gokuldas (Supra)* case. The Supreme Court in the case of *N.Harihara Krishnan Vs. J.Thomas*, reported in *(2018) 13 SCC 663* has considered the concept of taking cognizance of the offence but not the offender as not appropriate. and its inapplicability to proceedings under Section 138 of the NI Act. Under Section 138 of the NI Act a notice has to be given and if a notice is given on the basis of incorrect cheque number then the entire foundation will fall and complaint cannot be maintained on the basis of incorrect cheque

number.

12. A coordinate bench of this Court in the case of **Pandit Gorelal Vs. Rahul Punjabi**, reported in *(2010) 2 MPLJ 115* held that wrong number of the dishonored cheque has been mentioned in the complaint which was a typographical error. No infirmity has been committed by the trial Court in allowing the application filed by the complainant to correct the cheque number in complaint when the case was fixed for final arguments.

13. Learned Magistrate in its order has mentioned that mentioning of the name of Punjab National Bank may be a typographical error and it is a formal infirmity. In view of the judgment passed by the Apex Court in case of *U.P. Pollution Control Board (supra)* and *S.R. Sukumar (supra)* case and the view taken by the coordinate bench of this Court, I am of the considered view that where due to inadvertence of the complainant name of the bank has been wrongly mentioned in complaint same is a curable infirmity and that can be cured through amendment at any stage before pronouncement of the judgment and in a case of curable infirmity criminal Court can grant leave to amend the complaint by incorporating the name of the bank of which cheque was issued.

14. Therefore, in wake of above discussion, it is apparent that Courts below have not committed any error in passing the impugned orders as amendment sought to be made by complainant relates to mere curing a simple infirmity, which has resulted in no prejudice to the accused and same may be allowed by the Court at any stage of the proceedings as the same does not change the nature of the complaint and is mean to cure

the curable defects.

15. Consequently, this petition under Section 482 of the Cr.P.C being devoid of merits is dismissed.

**(DINESH KUMAR PALIWAL)
JUDGE**

Jasleen

