

--1--

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. CRIMINAL CASE No. 23534 of 2023

BETWEEN:-

ANIL KUMAR S/O SHRI RAMNIWAS PATIDAR,
AGED ABOUT 44 YEARS, OCCUPATION: SERVICE,
R/O.VILLAGE GONDIDHARMASI, TEHSIL JAORA,
DISTRICT RATLAM (MADHYA PRADESH)

.....PETITIONER

(BY SHRI M.A. MANSOORI - ADVOCATE)

AND

BALWANTSINGH SETHI S/O SHRI SOHANSINGH SETHI,
AGED ABOUT 61 YEARS, OCCUPATION: BUSINESS
HOUSE NO.6, SETHI SADAN, KHARIWAL COLONY,
BEHIND THE CHURCH, JAORA, DISTRICT RATLAM
(MADHYA PRADESH)

.....RESPONDENT

(BY SHRI UPENDRA SINGH - ADVOCATE)

Reserved on :- 1/2/2024

Pronounced on :-18/3/2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble JUSTICE PRANAY VERMA, pronounced the following

ORDER

1. This petition under Section 482 of the Cr.P.C has been preferred by the petitioner/accused being aggrieved by the order dated 16/5/2023 passed in SC NIA No.129/2019 by the Judicial Magistrate, First Class, Jaora, District Ratlam whereby the application preferred by the complainant/respondent for making amendment in the original complaint filed by him under Section 138

of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the Act, 1881') has been allowed. The petitioner/accused has also challenged the order dated 11/3/2023 passed by the trial Court rejecting an application under Section 142 of the Act, 1881 filed by him.

2. The facts of the case are that the complainant has filed a complaint before the Trial Court under Section 138 of the Act, 1881 against the accused. It is his allegation that for returning part of the amount borrowed by him, the accused had issued four cheques to him for payment of a total sum of Rs.7,00,000/-. The cheques were presented for encashment but were returned unpaid on 11/6/2019 due to insufficiency of funds in the bank account of the accused. Thereafter legal notice was sent to accused on 18/6/2019 despite service of which no payment was made by the accused within the period of 15 days of the amount payable under the cheques hence the complaint has been filed by him.

3. On filing of the complaint cognizance of the same was taken by the trial Court on 3/8/2019. Thereafter charge under Section 138 of the Act, 1881 was framed against the accused. On 7/12/2019, the accused moved an application under Section 142 of the Act, 1881 before the trial Court submitting that the complainant has issued notice to him and has filed complaint with respect to the cheque dated 10/5/2018 and 15/5/2018. Instead of producing the aforesaid cheques the complainant has produced cheques dated 10/5/2019 and

15/5/2019 hence the complaint deserves to be dismissed on that ground. The complainant contested the application by filing his reply submitting that variation in the dates is merely a typographical error and he has already filed an application for correction of the same. By order dated 18/3/2023 the aforesaid application of the accused was rejected by the trial Court on the ground that the complaint cannot be dismissed only on the basis of technicalities.

4. The complainant had on 25/1/2020 filed an application for amendment in the original complaint as stated above which was opposed by the accused but has been allowed by the trial Court by the impugned order dated 16/5/2023. It has been held that the aforesaid error is only a typographical error and for correction of the said inadvertent mistake the amendment deserves to be permitted.

5. Learned counsel for the accused has submitted that in the Code of Criminal Procedure, there is no provision which permits amendment in the pleadings. The application was also moved without mentioning any provision of law. The complainant has filed the complaint with respect to cheques dated 10/5/2018 and 15/5/2018. The same dates were also mentioned in his affidavit so also in the notice issued by him to the accused prior to filing of the complaint. Thus, the dates of the year 2018 have been mentioned by the complainant since the very inception hence it was not a case of mere

typographical error or inadvertent mistake. Reliance has been placed on the decision of this Court in *Lekhraj Singh Kushwah Vs. Brahmanand Tiwari*, *ILR (2013) M.P. 1783* and order dated 27/8/2014 in M.Cr.C.No.5527/2012 *Dilip V/s. State of M.P.*. It is further submitted that for the very same reasonings the order dated 11/3/2023 rejecting the application of the accused under Section 142 of the Act, 1881 also deserves to be quashed.

6. Per contra, learned counsel for the complainant has submitted that the cheques are dated 10/5/2019 and 15/5/2019 only. There is no cheque exchanged between the parties bearing the date 10/5/2018 and 15/5/2018. Mentioning of year 2018 in the complaint is a mere typographical error and/or inadvertent mistake due to omission on part of the complainant which is a curable infirmity which can be cured through amendment at any stage before pronouncement of the judgment. The trial Court had ample jurisdiction to grant leave to amend the complaint which has been done by it by impugned order dated 16/5/2023. For the very same reason it had also correctly rejected the application under Section 142 of the Act, 1881 filed by the accused. There is no error in the orders passed by the trial Court in view of which the petition deserves to be dismissed. Reliance has been placed by him on the decision of this Court in *Bhupendra Singh Thakur V/s. Umesh Sahu* M.Cr.C.No.35101/2022 decided on 26/7/2022, order dated 14/3/2019 passed in CRA-M-25163/2015 by High Court of Punjab and Haryana at Chandigarh

between *M/s. Om Prakash Satpal Commission Agent V/s. Nidan Singh* and order dated 4/1/2023 passed in CRA.-M-6036/2018 (ONM) also by High Court of Punjab and Haryana at Chandigarh in the case of *Suman Devi V/s. Chatrapal.*

7. I have considered the submission of the learned counsel for the parties and have perused the record.

8. In *Dilip* (Supra) the dispute was as regards correction of the cheque number which was sought to be done by way of amendment in the complaint as well as in the notice and affidavit filed by the complainant. In that regard it was categorically held by this Court that the mistake in the cheque number, which is akin to the mistake in the date of the cheque, cannot be corrected by way of an amendment. It was further held that there is no provision in the Cr.P.C to amend the criminal complaint. The relevant part of the order reads as under :-

*“7. On perusal of the record, it is evident that cheque No.049063 instead of correct No.0494063 has been mentioned in the notice which was issued by the respondent/complainant under Section 138 of NI Act for demand of unpaid cheque money. The cheque number initially mentioned was wrong in the notice which was based for filing the complaint under Section 138 of the Act, the said mistake cannot be corrected by the way of amendment. Moreover, in the affidavit as well as criminal complaint the same wrong cheque number has been stated. There is no provision in the Code of Criminal Procedure to amend the criminal complaint. In the judgment of the case of *Lekhraj Singh Kushwah V/s. Brahmanand Tiwari*, 2013 (5) MPHT 184, this Court after considering the earlier view has held that amendment in the complaint, notice as well as in the affidavit filed by the*

respondent cannot be permitted. This case is squarely covered by the said judgment.”

9. In **Lekhranj Singh Kushwah** (Supra) this Court has held that there is no provision for amendment in Cr.P.C and the amendment in the complaint cannot be permitted. It has been held as under :-

“10. Thus, looking to the facts that coordinate Bench of this Court has consistently held in **Kunstocom Electronic (I) Ltd and Sunder Dev** (Supra) which has been decided much prior to Pt. Gorelal’s case, the decision is binding upon latter coordinate Bench. Considering the facts of the instant case that not only in the pleadings of the complaint, but in the notice as well as in the affidavit filed by the respondent, number of cheque has been mentioned as 332534, in my opinion, the learned Courts below have committed illegality in allowing such amendment.”

10. In the case of **Kunstocom Electronic (I) Ltd V/s. State of M.P. & Anr.**, **2002 (5) MPLJ 178** relied upon in the aforesaid decision it had already been held that there is no provision in the Cr.P.C giving right to the parties to file an application for amendment in the pleadings. It was held therein as under :-

“19. This Court would not fail to mention here that there is no provision in the Criminal Procedure Code giving right to the parties to file an application for amendment in the pleadings and give powers to lower Courts to allow the same. In the present case, learned trial Court should not have entertained the application for amendment in the complaint for correcting the factual position about withdrawal of full amount of learned counsel. If there was any mis-statement of fact in the complaint because of bona fide mistake or intention, the same could be explained in Court statement by the complainant.”

11. In **Chandrapal Singh V/s. Ashok Leyland Ltd**, **ILR 2012 M.P. 302** it was held on facts that the request for amendment of the complainant should be

allowed. However, the issue raised therein was not specifically whether amendment in a complaint under the provisions of Cr.PC can be permitted. In any case the amendment sought was for correcting the description of the name of the complainant which was a company and which had merged with another company.

12. In *S.R. Sukumar V/s. S. Sunaad Raghuram, (2015) 9 SCC 609,* amendment was held permissible to a limited extent since at the time of decision of the amendment application cognizance had not been taken, summons were yet to be issued, amendment did not change the original nature of complaint and the facts proposed by the amendment were in the nature of subsequent events. It was held as under :-

“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.

19. In the instant case, the amendment application was filed on 24.05.2007 to carry out the amendment by adding paras 11(a) and 11 (b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, Magistrate was yet to apply the judicial mind

to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem 'Khalnayakaru' being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under [Article 136](#) of the Constitution of India.

13. In ***Bhupendra Singh Thakur*** (Supra) the dispute was as regards the name of the bank on which the cheque had been drawn which had been wrongly mentioned by the complainant and which was permitted to be amended on the ground that the same was merely curing a simple infirmity as the same does not change the nature of complaint and was made to cure the curable defects.

14. In the present case, admittedly the defect is of the date of the cheques which as per the complaint has been incorrectly mentioned. However, such mentioning is in the notice issued to the accused, in the complaint itself and so also in the affidavit filed in support of the complaint. The same cannot be said to be a simple or curable infirmity but relates to a substantial infirmity. As has been held by the Supreme Court in ***S.R. Sukumar*** (Supra) amendment cannot be allowed if it does not relate to a curable infirmity. Such infirmity cannot

also be corrected by a formal amendment if there is likelihood of prejudice to the other side.

15. The Trial Court has already applied its judicial mind to the contents of the complaint and has taken cognizance of the matter. Summons have already been issued to the accused and he has already appeared before the Court. The amendment if permitted would change the entire nature of the complaint as the date of the cheques itself would be altered. The facts proposed to be inserted by way of the amendment are not at all based upon subsequent events. If the amendment is permitted it would certainly cause prejudice to the accused. Thus, the amendment at this stage of the proceedings could not have been permitted whereas the trial Court has erred in doing so.

16. As a consequence, the impugned order dated 16/5/2023 passed by the trial Court cannot be sustained and is hereby set aside. In view of the same, the trial Court is directed to reconsider and redecide the application under Section 142 of the Act, 1881 filed by the accused.

17. The petition is accordingly allowed and disposed off.

(PRANAY VERMA)
JUDGE