



[2024:RJ-JP:17043]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 5796/2019

Mahaveer Prasad Suman S/o Late Shri Kalyan B/c Mali, R/o Near Gurudwara, Devpura, Bundi, Tehsil And District Bundi, Raj through his LRs

1. Smt. Chandrakala Suman W/o Late Shri Mahaveer Prasad Suman, B/c Mali, R/o Near Gurudwara, Devpura, Bundi, Tehsil And District Bundi, Raj.
2. Rohit Suman S/o Late Shri Mahaveer Prasad Suman, B/c Mali, R/o Near Gurudwara, Devpura, Bundi, Tehsil And District Bundi, Raj.
3. Kushal Suman S/o Late Shri Mahaveer Prasad Suman, B/c Mali, R/o Near Gurudwara, Devpura, Bundi, Tehsil And District Bundi, Raj.

-----Petitioners

Versus

Lalit Mohan Sharma S/o Shri Harishankar Sharma B/c Brahmin, R/o Ganesh Gali, Sadar Bazar, Bundi, Tehsil And District Bundi, Raj.

-----Respondent

For Petitioner(s) : Mr. Sudarshan Kumar Laddha
For Respondent(s) : Mr. M.K. Sheoran, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

ORDER

DATE OF PRONOUNCEMENT :- 24/04/2024

1. This misc. petition under Section 482 Cr.P.C. has been filed on behalf of the petitioners challenging the order dated 28.08.2019 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bundi, Rajasthan (hereinafter

referred to as 'the learned revisional court') in Criminal Revision

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No.09/2018 whereby the learned revisional court dismissed the revision petition filed by the complainant-petitioners and affirmed the order dated 31.07.2018 passed by learned Judicial Magistrate No.3 in Regular Criminal Case No.325/2016 rejecting the application filed by the complainant-petitioners for amendment in the complaint under Section 138 of the N.I. Act



2. The original complainant Mahaveer Prasad Suman filed a complaint case under Section 138 of the N.I. Act against the respondent, which is pending trial before the court of learned Judicial Magistrate No.3, Bundi. During trial, on 11.07.2017, the original complainant moved an application supported with affidavit before the learned trial magistrate for correction/amendment in the complaint as well as the affidavit annexed with it. It was averred in the said application that the accused respondent issued the cheque dated 03.11.2015 in his favour in lieu of the repayment of money borrowed by him for his domestic needs. On 03.12.2015, he presented said cheque to his banker i.e. Axis Bank for encashment. However, on 04.12.2015, the cheque in question was dishonored on account of insufficiency of funds in respondent's bank account. Thereafter, he sent a legal notice to the accused through his advocate which was duly received by the accused on 10.12.2015. When the accused respondent failed to make payment of the cheque in question within stipulated time period, he filed a complaint case under Section 138 of the N.I. Act before the court concerned. It is averred in the application that inadvertently, there happened some typographical errors/mistakes

in the legal notice as in para No.2 of the legal notice, the date of

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presentation of cheque has been mentioned as 03.11.2015 whereas actually, the correct date of presentation of cheque in question was 03.12.2015. Further, there has been inadvertent mistake in the same para with regard to date of dishonor of cheque. The date of dishonour of cheque is 04.12.2015 whereas it has wrongly been mentioned as 04.11.2015. The same typographical errors happened in complaint and the affidavit annexed therewith. The petitioner averred in the application that the documents annexed with the complaint clearly show that the complaint was filed within limitation period. The petitioner thus prayed that in the interest of justice, the correction/amendment in the dates may be made in the complaint and the affidavit annexed therewith and actual and correct dates in red ink may be inserted in place thereof.

3. Vide impugned order dated 31.07.2018, the learned trial court dismissed the aforesaid application. The petitioner, thereafter, challenged the order dated 31.07.2018 before learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bundi by way of filing revision. The learned revisional court also did not accept the prayer of the petitioner and vide order dated 28.08.2019, dismissed the revision of the petitioner.

4. Learned counsel for the petitioner submits that to err is human; to forgive divine. In the instant case, inadvertently on account of some typographical error, there occurred some mistakes of dates while mentioning them in the complaint and the

affidavit filed before the learned trial court. However, the
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documents annexed with the complaint clearly depicts the correct dates of the respective events. Learned counsel submits that both learned trial court as well as the learned revisional court committed illegality and perversity in dismissing the application of the petitioner seeking amendment/correction in the dates which were wrongly mentioned by the complainant. Learned counsel argues that on the basis of pay-in-slip (Annexure-2), both the courts below have observed that even if it is assumed that inadvertently, incorrect date of presentation of cheque (i.e., 03.11.2015) has been mentioned in place of correct date (i.e., 03.12.2015) but since the cheque returning memo does not bear any date, the submission of the petitioner regarding mentioning of incorrect date of dishonor of cheque cannot be accepted. Learned counsel argues that the cheque return memo (Annex.3) has been issued by the concerned banker and if, the concerned bank while issuing the cheque return memo has not mentioned the date, it would be fault or lack in services on the part of the concerned bank for which, the petitioner cannot be blamed. The bonafides of the petitioner is clear that there has been no overwriting or inserting of dates either in the pay-in slip or in the cheque return memo. The petitioner may have mentioned the date on his own as the said column was lying blank but he did not do so which clearly points towards bonafides of the petitioner. Learned counsel submits that since the aforesaid errors crept in very beginning, the same continued at later stages repetitively. Those were not committed intentionally. He also argues that the accused



respondent also moved an application dated 23.05.2017 for quashing the order taking cognizance on the ground of these [2024:RJ-JP:17043] [CRLMP-5796/2019]



typographical errors, crept in the complaint and the learned trial court vide order dated 31.07.2018 has also dismissed the prayer of the accused respondent. With these submissions, he prays that the instant misc. petition may be allowed.



5. As per office report dated 20.12.2019, service upon the sole respondent is complete. However, the respondent has remained unrepresented on each and every date and no one has appeared on his behalf to contest the misc. petition on a single date.

6. I have heard and perused the material available on record.

7. There is a famous latin phrase - *Res ipsa loquitur*, which means the thing speaks for itself. Firstly, the pay-in-slip (Annexure-2) clearly shows that the cheque was presented on 03.12.2015 and thus, there is no doubt that as to when the cheque was presented by the petitioner and that wrong date of presentation of cheque, has been mentioned. Secondly, it is apparent on the face of record that the cheque return memo (Annexure-3) does not bear any date for which, both the trial court as well as the revisional court have inferred that in absence of mentioning of any date on the cheque return memo, it cannot be said that the date of dishonour of cheque would be 04.12.2015 but the statement of the account of the complainant (Annex.10) clearly shows that the cheque in question (No.066017) was dishonored on 04.12.2015 for the reason 'funds insufficient'. It is

obvious that when the cheque in question itself was presented on 03.12.2015, how the same would get dishonored on 04.11.2015 [2024:RJ-JP:17043] [CRLMP-5796/2019]



i.e., prior to presentation of the cheque. The learned trial court ought to have perused and considered the complaint and documents while taking cognizance. Had the trial court also gone through the complaint and the documents annexed therewith carefully, these errors could have been noticed at very beginning. While dismissing the application of the accused-respondent for quashing the order taking cognizance, learned trial court observed that it being a criminal court, cannot review its own order. Further, by the same impugned order dated 31.07.2018, learned trial court refused to amend/correct the dates. Thus, from the order impugned, it is clear that despite there being mismatch/errors of dates, those would not be rectified/amended but proceedings would go on, which in no case would be acceptable to this Court.

8. Needless to say that if the information regarding dishonour of cheque was received by the petitioner on 04.11.2015 then he was required to serve legal notice within thirty days from the date of dishonour i.e., prior to 04.12.2015. While in this case, legal notice was sent to the complainant on 09.12.2015 through registered post and received by the complainant on 10.12.2015, which would render the complaint under Section 138 N.I. Act barred by limitation. It appears that even the learned trial court while taking cognizance under Section 138 of the N.I. Act has considered the date of dishonour of cheque to be 04.12.2015 and not 04.11.2015 because in that eventuality, the learned trial court would not have taken cognizance on complaint being barred by

limitation. I fortify my views from the judgment passed in the case

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of S.R. Sukumar v. S. Sunaad Raghuram reported in (2015) 9 Supreme Court Cases 609 wherein it was held as under:-

"18. 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 vs. 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: (SCC pp.659-60, para 6)

"6.....The learned Single Judge has focussed his attention only on the [pic]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..."

19. 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
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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 backdrop of the aforesaid discussion, this Court deems it a fit case for exercising powers under Section 482 Cr.P.C. Accordingly, both the orders impugned dated 31.7.2018 and 28.08.2019 are quashed and set aside. The application dated 11.07.2017 filed by the petitioner for amendment in complaint and affidavit annexed therewith is allowed. However, it is clarified that by this order, only correction in the dates in complaint and affidavit (with red ink) are permitted to be made. The accused respondent would be at liberty to cross-examine the complainant on this aspect of errors crept in pleadings for gaining any advantage in support of his case.

10. With the aforesaid observations and directions, the misc. petition stands disposed of.

(ANIL KUMAR UPMAN),J

Sudhir Asopa/16