2025 INSC 899

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(@ SPECIAL LEAVE PETITION (CRL.) NO.15699 OF 2024)

Bansal Milk Chilling Centre …APPELLANT (S)

VERSUS

Rana Milk Food Private Ltd. & Anr. …RESPONDENT(S)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. Procedure, it is said, is only a handmaiden and not a mistress of justice. However, the said adage has been followed only in the breach in this case. A simple issue of an amendment to a complaint has held up a trial under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") for the last nearly two years.

BRIEF FACTS:

3. The appellant, on 08.04.2022, filed a complaint under Section 138 of the NI Act, against the respondents. The complaint

averred that the respondents had purchased *Desi Ghee* (milk products) and that cheques issued by them numbering three and totaling to an amount of Rupees Fourteen Lakhs had been dishonored. Summons was issued to the respondents and at the stage when the complainant was yet to be cross-examined, an amendment application to amend the complaint was moved by the appellant. The appellant contended that due to a typographical mistake it had been pleaded that the respondents had been purchasing *Desi Ghee* (milk products) while it should have been that the respondents were purchasing "*milk*". The respondents vehemently objected to the amendment. It was contended that no amendment was permissible after cognizance is taken and that the amendment sought, changed the nature of the complaint.

4. By order dated 02.09.2023, the Trial Court held that since the complainant was yet to be cross-examined, no prejudice would be caused to the accused/respondents. It was also held that the amendment was in the nature of a typographical error, moved at an initial stage of the case. So holding the amendment was allowed.

5. The respondents challenged the order under Section 482 of Code of Criminal Procedure (for short 'the Cr.P.C.'). It was additionally contended that the amendment was not a typographical error since even in the legal notice that preceded the filing of the complaint, what was mentioned was "*Desi Ghee* (milk products)". It was further argued that the amendment is an attempt to avoid liability under the Goods and Services Tax Act, 2017 (for short the 'GST').

6. By virtue of the impugned order, the High Court has allowed the petition, holding that the amendment sought was not in the nature of a typographical error, but it had a wider impact upon the entire matter in dispute and, therefore, it changed the nature of the complaint. The High Court also found merit in the contention of the respondents that the amendment was sought, as no GST was leviable on milk.

CONTENTIONS:

7. We have heard Mr. Chritarth Palli, learned Counsel for the appellant and Mr. Aabhas Kshetarpal, learned Counsel for the respondents. We have also perused the records. Learned Counsels reiterated the stand of the respective parties in the courts below.

8. The issue, whether a criminal court has power to order amendment of a complaint filed under Section 200 of the Cr.P.C., is no longer *res integra*. In ***S.R. Sukumar v. S. Sunaad Raghuram***[1], this Court held as under:-

> "19. What is discernible from *U.P. Pollution Control Board case* is that an 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."

9. The learned counsel for the respondents sought to distinguish the judgement in ***S.R. Sukumar's case*** (supra) by contending that in the said case amendment was sought and allowed at the pre-cognizance stage and as such the said case can have no application here. We are unable to countenance the said submission.

[1] (2015) 9 SCC 609

10. A careful reading of the judgment in ***S.R. Sukumar's case (supra)*** reveals that the said judgment followed the earlier judgment of this Court in ***U.P. Pollution Control Board*** vs. ***Modi Distillery and Others***[2]. In ***Modi Distillery (supra),*** after the process was issued to the respondents therein, a revision was filed by few of the accused and a Section 482 petition was filed by few other accused. Invoking the revisional jurisdiction, the High Court quashed the proceedings holding that vicarious liability could not be saddled on the Directors unless "Modi Industries Limited" was arrayed as accused. The Complainant in that case had arrayed "Modi Distillery", an industrial unit and averred that Modi Distillery was a Company. The High Court focusing on the technical flaw in the complaint quashed the proceedings on the premise that "Modi Industries Limited" was not made an accused. This Court, while allowing the appeal of the Complainant-U.P. Pollution Control Board, held as follows:-

> "6. ……The learned Single Judge has focussed 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

[2] (1987) 3 SCC 684

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. Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-section (1) or (2) of Section 47 of the Act unless there was a prosecution against Modi Industries Limited, the company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in para 2 has to be construed in the light of the averments contained in paras 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company."

Further, it was held

"7. ……It would be a travesty of justice if the big business house of Modi Industries Limited is allowed to defeat the prosecution launched and avoid facing the trial on a technical flaw which is not incurable for their alleged deliberate and wilful breach of the provisions contained in

> Sections 25(1) and 26 made punishable under Section 44 read with Section 47 of the Act."
>
> (Emphasis supplied)

This Court allowed the appeal and set aside the order of the High Court and restored the order of the Chief Judicial Magistrate directing issue of process and directed that the trial be proceeded expeditiously. What is significant to notice is that ***Modi Distillery (supra)*** was a case where cognizance was taken at a stage when the accused approached the High Court and it was then that this Court observed that a formal application for amendment for substituting the name would have cured the defect.

11. Reverting back to ***S.R. Sukumar (supra)***, it does not follow from the judgment that post-cognizance, no amendment can be allowed. In fact, a reading of the penultimate paragraph of the judgment clearly brings out the fact that four distinct reasons were given: -

> **"20.** In the instant case, the amendment application was filed on 24-5-2007 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, the 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."
>
> (Emphasis supplied)

Hence, it is fallacious to contend that in no circumstance can amendments to complaints be allowed after cognizance is taken.

12. Similarly, in ***Kunapareddy alias Nookala Shanka Balaji*** vs. ***Kunapareddy Swarna Kumari and Another***[3], it was held that even in criminal cases governed by the Code, Court is not powerless and may allow amendments in appropriate cases. The Court in ***Kunapareddy (supra)*** followed the holding in ***S.R. Sukumar (supra)***.

13. In ***Munish Kumar Gupta*** vs. ***Mittal Trading Company***,[4] while disallowing an amendment seeking alteration in the date of the cheque from 22.07.2010 to 22.07.2012, this Court, in para 9, held as under:-

[3] (2016) 11 SCC 774
[4] 2024 SCC OnLine 1732

> **"9.** In a matter of the present nature, where the date is a relevant aspect based on which the entire aspect relating to the issue of notice within the time frame as provided under the Negotiable Instruments Act, 1881, and also as to whether as on the date there was sufficient balance in the account of the issuer of the cheque would be the question, the amendment, as sought for, in the present circumstance, was not justified."

That judgment is entirely distinguishable as the amendment sought had a bearing on the time frame for issuance of notice of demand and on the aspect of existence of balance in the account. Further, as is clear from the facts, that amendment was sought after a long delay.

14. The term "complaint" is defined in Section 2(d) of the Code of Criminal Procedure, 1973 [Section 2(1)(h) of the Bharatiya Nagarik Suraksha Sanhita, 2023] which reads as follows:-

> "2 (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

As would be seen ordinarily, a complaint could even be oral. However, dealing with a case under Section 138 of the NI Act, we must notice that Section 142 of the NI Act states that to take cognizance of any offence punishable under Section 138, a written complaint is mandatory. Unless expressly prescribed, if to set a criminal case in

motion ordinarily an oral complaint would be sufficient, any question about amendment of a written complaint should be considered by giving the widest latitude. However, as was rightly pointed out in ***S.R. Sukumar (supra)***, it should be ensured that no prejudice should be caused to the accused.

15. It will be appropriate to observe that amendments/alterations are not alien to the Code of Criminal Procedure. Section 216 of the Cr.P.C. deals with the power of Court to alter any charge and the concept of prejudice to the accused. No doubt when a charge is altered, what is altered is the legal provision and its application to a certain set of facts. The facts *per se* may not be altered. However, the section does throw some light in considering the issue of amendments.

16. Section 216 and 217 of Cr.P.C [Section 239 and 240 of the Bharatiya Nagarik Suraksha Sanhita, 2023] read as follows:-

> "**216. Court may alter charge.-**
>
> (1) Any Court may alter or add to any charge at any time before judgment is pronounced.
> (2) Every such alteration or addition shall be read and explained to the accused.
> (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may,

in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may, either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

(Emphasis supplied)

217. Recall of witnesses when charge altered. - Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed –

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material."

It will be noticed that when a charge is altered, if there is no prejudice to the accused, the trial can be proceeded with. Further, if it is likely to prejudice, the Court may either direct a new trial or adjourn the trial to such period. Section 217 of the Cr.P.C. grants liberty to the prosecutor and the accused to recall witnesses when charges are altered under the

conditions prescribed therein. The test of 'prejudice to the accused' is the cardinal factor that needs to be borne in mind.

17. We have carefully perused the complaint and the application for amendment. The amendment was moved at a stage when after summons being issued to the respondents, the chief examination of the complainant had concluded and when cross-examination was awaited. The amendment made is also only with regard to the products supplied. According to the complainant, while what was supplied was "milk", by an inadvertent error "*Desi Ghee* (milk products)" was mentioned. The error which occurred in the legal notice was carried in the complaint also.

18. On the facts of the present case and considering the stage of the trial, we find that absolutely no prejudice would be caused to the accused/respondents. The actual facts will have to be thrashed out at the trial. As to what impact the amendment will have on the existence of debt or other liability is for the Trial Court to decide based on the evidence. It was a curable irregularity which the Trial Court rightly addressed by allowing the amendment. It could not be said that by

allowing the amendment at a stage when the evidence of the complainant was incomplete, failure of justice would occasion.

19. The High Court completely mis-directed itself in delving into the aspects of leviability of GST which would be the concern of the appropriate authorities under the relevant statute. It could also not be said that the amendment altered the nature and character of the complaint.

20. For the reasons aforestated, the appeal is allowed. The judgment and order of the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 53932 of 2023 (O&M) is set aside and that of the Trial Court dated 02.09.2023 is restored. The Trial Court shall proceed expeditiously and the parties will be at liberty to apply for recall of witnesses already examined.

.....J.
[**B.V. NAGARATHNA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
25th July, 2025