

*** HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Revision Case No.928 of 2019

% Dated 27-01-2020

Between:

M/s. Bangi Linganna rep. by its prop: U.B. Mallikarjuna,
Yemmiganur.

..... Petitioner

and

\$ State of A.P. rep. by the Public Prosecutor & ors.

..Respondents

! Counsel for the petitioner : Sri Butta Vijaya Bhaskar

^ Counsel for respondent No.1 : Addl. Public Prosecutor
Counsel for respondent Nos.2&3 : Sri Surendra Desai

<GIST:

> HEAD NOTE:

? Cases referred

1. (2015) 9 SCC 609
2. (1987) 3 SCC 684
3. (2016) 11 SCC 774 = AIR 2016 SC 2519 =2016 (2) ALD (Cri)
21
4. 2014 LawSuit(Raj) 1166 = 2014 (3) Crimes(HC) 515 = 2015
(3) BankCas 12
5. 2018 LawSuit(Raj)1563 = 2019(2) CriCC 547 = 2019(2)
CivCC 541

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**Criminal Revision Case No.928 of 2019**

Between:

M/s. Bangi Linganna rep. by its prop: U.B. Mallikarjuna,
Yemmiganur.

..... Petitioner

and

State of A.P. rep. by the Public Prosecutor & ors.

..Respondents

JUDGMENT PRONOUNCED ON: 27-01-2020

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be
marked to Law Reporters/Journals -Yes-
3. Whether His Lordship wish to see the fair
copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Criminal Revision Case No.928 of 2019****ORDER:**

The petitioner challenges in this revision, the order dated 02.08.2019 passed in Crl.M.P.No.1226 of 2019 in C.C.No.326 of 2017 on the file of the Judicial Magistrate of First Class, Yemmiganur, Kurnool District, whereby the petition filed by him seeking permission to amend the cause-title of the complaint to correct the name of the accused as "S.G. Ampamma" instead of "S.G.Annapurnamma" was dismissed.

Facts of the revision case are rather jejune and may be stated as follows:

The petitioner is the complainant in C.C.No.326 of 2017 on the file of the Judicial Magistrate of First Class, Yemmiganur. He has filed the said complaint against respondent Nos.2 and 3 herein, who are accused therein, under Section 138 of the Negotiable Instruments Act, 1881, (for short, "the N.I. Act") on the ground that the cheque that was issued towards discharge of legally enforceable liability was dishonoured. The 1st accused in the said case is "Vamsha Traders represented by its Proprietor. The 2nd accused is the proprietor of the said Vamsha Traders. The 2nd accused is shown as representing the 1st accused

Vamsha Traders. Her name was shown as “S.G. Annapurnamma” in the cause-title of the complaint.

It is the case of the complainant that in fact the correct name of the 2nd accused is “S.G. Ampamma”. But, inadvertently by mistake, that her name was typed as “S.G. Annapurnamma” in the cause-title. When notice dated 12.07.2017 was issued to her before filing the complaint, she received the same and acknowledged the receipt of the said notice and she got issued a reply notice dated 17.07.2017, wherein her name is mentioned as “S.G. Ampamma”. She has also signed on the cheque as “Ampamma”. In the reply notice also she has admitted that she is the proprietor of the 1st accused-Vamsha Traders. However, she pleaded that she has closed that business on 21.07.2014. Now, taking advantage of the said spelling mistake in mentioning the name of the 2nd accused as “S.G. Annapurnamma” that she is trying to wriggle out from her liability in the case. Therefore, the complainant has filed a petition under Order VI Rule 17 CPC seeking permission of the Court to amend the cause-title in the complaint to correct the name of the 2nd accused, who is also representing the 1st accused, as “S.G. Ampamma”.

The said petition was opposed by the accused in the said case mainly on the ground that there is no provision either in the Criminal Procedure Code or in the N.I. Act to

seek amendment of a complaint filed under Section 138 of the N.I. Act. So, the complainant cannot invoke Order VI Rule 17 CPC, which pertains to amend the pleadings in a Suit, to amend the complaint in a criminal case. Accepting the said contention of the accused that there is no provision in the Cr.P.C. or in the N.I. Act which enables the complainant to amend the complaint in a criminal case and also on the ground that Order VI Rule 17 CPC is applicable only to amend the pleadings, which are plaint and written statement, the learned Magistrate dismissed the said petition as not maintainable by the impugned order.

Aggrieved thereby, the complainant has preferred the present Criminal Revision Case assailing the legality and validity of the impugned order.

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the 1st respondent-State. Despite service of notice, none appeared for respondent Nos.2 and 3-accused.

The seminal question that arises for determination in this revision case is, whether a petition to amend a complaint filed in a criminal case is maintainable or not in the absence of any provision to that effect in the Cr.P.C. or in the N.I.Act.

As already noticed supra while narrating the facts of the case, the complainant has filed a complaint under Section 138 of the N.I. Act against Vamsha Traders represented by its proprietor showing it as 1st accused and against the 2nd accused therein, who is the proprietor of the 1st accused, who is named as “Smt.S.G. Annapurnamma” on the ground that the cheque that was issued by the 2nd accused as proprietor of the 1st accused towards discharge of legally enforceable liability was dishonoured. During the pendency of the said case in the trial Court, it is noticed by the complainant that the correct name of the 2nd accused, who is also representing the 1st accused, is “S.G. Ampamma” and not “S.G. Annapurnamma” and it was wrongly mentioned in the complaint due to spelling mistake that her name is “S.G. Annapurnamma”. Therefore, he sought permission of the trial Court for amendment of the name of the 2nd accused as “S.G. Ampamma” in the cause-title of the complaint. As noticed supra, the said petition was dismissed by the trial Court solely on the ground that there is no provision in the Cr.P.C. or in the N.I. Act which enables the parties to amend the complaint in a criminal case. The learned Magistrate also held that Order VI Rule 17 C.P.C. applies only to amend the pleadings which are plaint and written statement and not the complaint relating to a criminal case.

Oblivious of the settled legal position in this regard, the learned Magistrate has, undoubtedly, taken an erroneous view. The law is now well-settled that eventhough there is no provision in the Cr.P.C. or in the N.I. Act to amend the complaint in a criminal case that in appropriate cases when the Court finds that the amendment is essential to do real justice to the parties and when the mistake in the complaint is a *bona fide* mistake, then the Court can always permit the parties to amend the complaint suitably. The legal position in this regard is not *res nova* and the same has been well-settled. There are plethora of judicial pronouncements on the said proposition of law.

The Apex Court in **S.R. Sukumar v. S. Sunaad Raghuram**¹ held as follows:

“ 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 v. Modi Distillery**², also the Apex Court held that amendment can be permitted in a criminal case. In the said case, the name of the company was wrongly mentioned in the complaint. Instead of “Modi Industries Ltd.” the name of the company was

¹ (2015) 9 SCC 609

² (1987) 3 SCC 684

mentioned as “Modi Distillery”. The complainant sought permission of the Court to amend the complaint to correct the wrong mentioning of the name of the company. The Supreme Court held that permission can be accorded to amend the complaint. As per the ratio laid down in the same judgment of the Apex Court, a curable legal infirmity could be cured by means of a formal application for amendment when no prejudice could be caused to the other side. Further held that notwithstanding the fact that there is no enabling provision in the Code to entertain such amendment, the Court may permit such an amendment to be made.

Relying on the above two judgments of the Apex Court, again in **Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari**³ the Supreme Court held at para 18 of the judgment as follows:

“What we are emphasizing is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.”

The Jaipur Bench of the Rajasthan High Court also in the case of **Oswal Finlease Private Limited v. State of**

³ (2016) 11 SCC 774 = AIR 2016 SC 2519 =2016 (2) ALD (Cri) 21

Rajasthan⁴, held that amendment to correct typographical error in details of the cheque mentioned in the complaint and also in the affidavit made, after cross-examination of the complainant can be allowed and *bona fide* mistakes can be corrected by way of amendment.

The Rajasthan High Court in another case in **Kanwar Lal v. National Seeds Process through its Partner Kishore @ Ganshyam**⁵ also held that amendment to correct the name of the party that was wrongly mentioned in the cause-title can be allowed.

As per the facts of the said case, the actual name of the accused in the said case is “Kishore”. As he was commonly called as “Ghanshyam”, he was initially shown as “Ghanshyam” in the complaint. During the pendency of the complaint, the complainant realized that the actual name of the accused is “Kishore” and his alias name is “Ghanshyam”. Therefore, he sought permission of the Court to amend the cause-title of the complaint to correct the name of the accused. The Court found that the wrong mentioning of the name of the accused in the complaint is due to *bona fide* mistake and held that the trial Court should have acted objectively and should have allowed the complainant to make the requisite correction in the cause-title of the complaint.

⁴ 2014 LawSuit(Raj) 1166 = 2014 (3) Crimes(HC) 515 = 2015 (3) BankCas 12

⁵ 2018 LawSuit(Raj)1563 = 2019(2) CriCC 547 = 2019(2) CivCC 541

Therefore, held that the impugned order of the trial Court *ex facie* does not stand to scrutiny and deserves to be set aside.

Thus, from the conspectus of the law laid down in the above cited judgments of the Apex Court and also the judgments of the Rajasthan High Court, the legal position is perspicuous that notwithstanding the fact that there is no provision in the Cr.P.C. enabling the parties to seek permission of the Court to amend a complaint in a criminal case, filed either under Section 138 of the N.I. Act or under any of the provision of law, when the Court finds that the mistake is a *bona fide* mistake and when the amendment sought is essential for effective adjudication of the controversy in the *lis* and to render substantial and real justice to the parties and when it requires to avoid multiplicity of proceedings that in all such appropriate cases, that the Courts can allow the parties to amend the pleadings to cure the curable infirmities by according necessary permission to that effect and particularly when no prejudice is caused to the opposite party by permitting the party to amend the complaint. Only a formal application is required to be filed for the said purpose.

Therefore, in view of the law enunciated in the above judgments, the impugned order of the learned Magistrate is clearly unsustainable under law. So, it is liable to be set aside.

In the result, the Criminal Revision Case is allowed setting aside the order dated 02.08.2019 passed in Crl.M.P. No.1226 of 2019 in C.C.No.326 of 2017 on the file of the Judicial Magistrate of First Class, Yemmiganur. The petition filed by the complainant seeking permission to amend the cause-title of the complaint is allowed permitting him to correct the name of the 2nd accused as "S.G. Ampamma" and carry out necessary amendments in the complaint.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:27-01-2020.

Note:

L.R. copy to be marked.

B/O

cs