HC-KAR

NC: 2026:KHC:39128
WP No. 12477 of 2025

CNR: KAHC010272092025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 12477 OF 2025 (GM-RES)

BETWEEN:

SRI RATHNAKAR SHETTY,
S/O SANJEEV SHETTY,
AGED ABOUT 66 YEARS,
R/AT NO.465, 4TH CROSS,
16TH MAIN, 3RD BLOCK,
KORAMANGALA, BENGALURU - 560034.

...PETITIONER

(BY SRI ASHOK B PATIL, ADVOCATE)

AND:

MR. M.S. CHANDRA SEKHAR,
S/O MAKAM RANGANATH SUBRAMANYAM,
AGED ABOUT 54 YEARS,
PRESENTLY R/AT STERLING TERRACE,
A 603, 6TH FLOOR, 100FT RING ROAD,
BENGALURU - 560085.

...RESPONDENT

(BY SRI SANDESH J CHOUTA FOR

SRI NITIN PRASAD, ADVOCATE FOR R-1)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 528 OF THE BNSS, 2023 PRAYING TO I. ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION QUASHING THE PROCEEDINGS IN PCR NO. 13348/2023 (C.C.NO.656/2024) AT ANNEXURE-E,

PENDING ON THE FILE OF THE XVI ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BENGALURU CITY, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

Petitioner – accused is before this Court seeking the following relief:

> "i. Issue an appropriate writ, order or direction quashing the proceedings in PCR No.13348/2023 (C.C.No.656/2024) at ANNEXURE-E, pending on the file of the XVI Additional Chief Judicial Magistrate, Bengaluru City, in the interest of justice and equity.
>
> ii. Issue an appropriate writ, order or direction quashing the order dated 17-03-2025, allowing the application for amendment of the Complaint at ANNEXURE-P In C.C.No.656/2024, pending on the file of the XVI Additional Chief Judicial Magistrate, Bengaluru City, in the interest of justice and equity.
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> iii. Issue an appropriate writ, order or direction quashing the order dated 17-03-2025, dismissing the application under Section 91 Cr.P.C., filed by the petitioner at ANNEXURE-Q in C.C.No.656/2024, pending on the file of the XVI Additional Chief Judicial Magistrate, Bengaluru City, in the interest of justice and equity.
>
> iv. Pass such other order as this Hon'ble Court deems fit, on the facts and circumstances of the case, including the award of costs, in the interest of justice and equity."

2. Heard Sri Ashok B. Patil, learned counsel for petitioner, Sri Sandesh J. Chouta, learned senior counsel for Sri Nitin Prasad, learned counsel for respondent No.1. Notice to respondent No.2 is not issued.

3. Facts in brief, germane, are as follows:

The petitioner is the accused, respondent is the complainant. The two alleged to have a transaction and the transaction is with regard to transfer of an amount of ₹4,65,00,000/- from the account of the complainant to the account of the petitioner, in furtherance of which, the petitioner is said to have issued a cheque for ₹4,15,96,679/-. The cheque having been presented is returned for want of sufficient funds. The complainant institutes proceedings invoking Section 200 of Cr.P.C. for offence punishable under Section 138 of the Negotiable Instruments Act.

4. The issue in the *lis* is not with regard to the merit of the matter before the concerned Court. Two applications are filed, one by the petitioner - accused under Section 91 of the Cr.P.C., summoning the account details of a particular bank

from different branches and the other by the complainant seeking amendment of the complaint.

5. What followed the application so filed by the petitioner - accused is the application filed by the complainant seeking amendment of the complaint of an allegedly inadvertent mistake while drafting the complaint. The concerned Court allows the application seeking amendment of the complaint preferred by the respondent – complainant and rejects the application under Section 91 of the Cr.P.C. on the score that the amendment has now cured the defect on which the application under Section 91 had been preferred. Therefore, the petitioner - accused is before This Court calling in question the aforesaid twin orders.

6. Sri Ashok B. Patil, learned counsel appearing for the petitioner would contend that there is no transaction between the petitioner and the respondent. The petitioner has not even seen the face of the respondent and not received any amount from the hands of the respondent - complainant into the account of the petitioner. He would submit that the two accounts that the complainant wants to project does not belong

to the petitioner nor has an account in those branches of HDFC Bank. Therefore, he submits that on this score, the application filed by the petitioner under Section 91 of the Cr.P.C. ought to have been allowed and the amendment to the complaint ought to have been rejected. It is on these grounds, the learned counsel submits that the petition be allowed.

7. *Per contra*, Sri Sandesh J. Chota, learned senior counsel representing for the respondent – complainant would vehemently refute the submissions contending that the amendment to the complaint was of an inadvertent error. The amendment would explain everything. In the light of the amendment, nothing further would survive to allow the application filed under Section 91 of the Cr.P.C., preferred by the petitioner – accused, as the accused was taking advantage of the inadvertent error that had been crept in the complaint. Learned senior counsel would submit that all the facts of the matter are to be tested in evidence before the concerned Court and would seek dismissal of the petition by placing reliance upon the judgment of the Apex Court in the case of **BANSAL**

MILK CHILLING CENTRE VS. RANA MILK FOOD PRIVATE LIMITED AND ANOTHER reported in **(2026) 1 SCC 712**.

8. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

9. The afore-narrated facts and link in the chain of events are all a matter of record. What has driven the petitioner – accused to this Court is on a technical, if not a hyper technical ground that is projected before the Court.

10. It is the submission of Sri Ashok B. Patil, learned counsel for petitioner that the application under Section 91 of the Cr.P.C. ought to have been allowed. The contents of the application are as follows:

> "XXX
>
> 4. The accused further submits that, in the purported notice dated 22-09-2023, under Section 138 N.I. Act, produced as Annexure-D along with the Complaint and marked as Ex-P3 in the sworn statement proceedings, in para 2 thereof, the Complainant has stated about the alleged deposit, as under:
>
> > **"In furtherance of the above understanding, on 5th August, 2022, Client transferred an amount of INR 4,65,30,000/-through RTGS transfer**

bearing UTR No.HDFCR52022080587149641 to your bank account maintained with HDFC Bank, Banashankari 3rd Stage Branch, Bangalore, after deducting an amount of Rs.4,70,000/- towards tax collection at source, as mandated under the Income Tax Act, 1961, which you accepted without any demur".

Therefore, it is just and appropriate that, the statement of account of the said deposit in the alleged account of the accused also needs to be summoned from the said Branch.

5. The accused submits that, the above said documents are absolutely necessary to be summoned, having regard to the material on record that, the Complainant has set up the above proceedings based on an Agreement to Sell said to be dated 05-08-2022, which is signed by him only and apparently, not signed by the accused. The reading of the Complaint, the documents produced along with the Complaint including the reply notice of the accused dated 26.10.2023 (Ex-P8) would prima facie establish that, the present Complaint is frivolous and vexatious. Therefore, it is imperative that, the documents sought in this application are to be summoned from the two Banks, which should be, available with them if the statements of the Complainant in the Complaint and in the statutory notice are true. Hence, this application.

6. The accused submits that, if the prayer in this application is granted, the Complainant will not be put to any prejudice, since the documents are sought to be summoned based on his own statements. On the other hand, if the application is not allowed, the accused will be put to grave prejudice, in as much as, he is subjected to a false, frivolous and vexatious criminal proceeding based on fabricated contentions. and documents untenable

Wherefore, this Hon'ble Court may be pleased to summon the following documents:

i. The statement of account from HDFC Bank, Jayanagar 4th T Block Branch, Bengaluru, regarding the alleged deposit of Rs.4,65,30,000/- through RTGS transfer bearing UTR No.

HDFCR52022080587149641 to the purported account of the accused, Mr. Rathnakar Shetty.

ii. The statement of account from HDFC Bank, Banashankari 3rd Stage Branch, Bengaluru, regarding the alleged deposit of Rs.4,65,30,000/- through RTGS transfer bearing UTR No. HDFCR52022080587149641 to the purported account of the accused, Mr. Rathnakar Shetty, in the interest of justice and equity."

(Emphasis added)

11. After filing of the application by the petitioner - accused, the application seeking amendment of the complaint is filed by the respondent - complainant. The application reads as follows.

"1. The Complainant has filed the present Complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, read with Section 190 and 200 of the Code of Criminal Procedure, 1973 against the Accused in respect of the dishonour of cheque, bearing no. 000443 dated 22.08.2023 drawn on HDFC Bank, M.G. Road Branch, Bangalore, for an amount of INR 4,15,96,679/- issued by the Accused.

2 It is submitted that the present application is filed before this Hon'ble Court seeking to amend paragraph 4 of the Complaint, wherein it is stated that the Complainant transferred an amount of INR 4,65,30,000/- through RTGS transfer bearing UTR No. HDFCR52022080587149641 to the Accused's bank account maintained with HDFC Bank, Jayanagar 4th T Block Branch, Bangalore, after deducting an amount of INR 4,70,000/- towards tax collection at source. as mandated under the Income Tax Act, 1961, which the Defendant accepted without any demur'.

3. It was intended to state that 'an amount of INR 4,65,30,000/-through RTGS transfer bearing UTR No. HDFCR52022080587149641 from the Complainant's bank account maintained with HDFC Bank, Jayanagar 4th T Block Branch, Bangalore, was transferred to the Accused's bank account, after deducting an amount of INR 4,70,000/- towards tax collection at source, as mandated under the Income Tax Act, 1961, which the Defendant accepted without any demur'.

Bengaluru interalia seeking a judgment and decree of Specific Performance as against the Accused and a similar error has crept in the said Suit also at paragraph 5 of the Plaint. In order to rectify the typographical error the Complainant has filed an application for amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908, numbered as I.A. No.4, which is pending consideration.

11. It is submitted that the present application is filed for the above bonafide reason and not with a view to protract the proceedings. It is submitted that if the above application is allowed, no loss or hardship will be caused to the Accused. However, if the same were to be rejected, the Complainant will be put to irreparable loss and injury.

Wherefore, it is most humbly prayed that this Hon'ble Court may be pleased to allow the present application and permit the Complainant to amend paragraph 4 as follows, in the interests of justice:

PROPOSED AMENDMENT

In paragraph 4, substitute the words:

"...an amount of INR 4,65,30,000/- through RTGS transfer bearing UTR No. HDFCR52022080587149641 to the Accused's bank account maintained with HDFC Bank, Jayanagar 4th T Block Branch, Bangalore after deducting an amount of INR 4,70,000/- towards tax collection at source as mandated under the Income Tax Act 1961. which the Defendant accepted without any demur".

With the words:

> **"...an amount of INR 4,65,30,000/- through RTGS transfer bearing UTR No. HDFCR52022080587149641 from the Complainant's bank account maintained with HDFC Bank, Jayanagar 4th T Block Branch, Bangalore, was transferred to the Accused's bank account after deducting an amount of INR 4,70,000/- towards tax collection at source, as mandated under the Income Tax Act, 1961, which the Defendant accepted without any demur".**
>
> (Emphasis added)

The concerned Court passes two separate orders. One rejecting the application filed by the petitioner – accused under Section 91 of the Cr.P.C. and another allowing the application filed by the respondent – complainant.

12. Likewise, the application filed by the petitioner under Section 91 of the Cr.P.C. comes to be rejected on the following observations.

> "Instant application is filed by the accused U/Sec. 91 of Cr.P.C. to summon the account statement from the HDFC Bank, Banashankari 3rd Stage Branch, Bengaluru regarding alleged deposit of Rs.4,65,30,000/- through RTGS transfer as stated in the complaint at para No.4. It is stated that in para No.4 of the complaint the complainant has stated that Rs.4,65,30,000/- has been transferred --" in furtherance of the above understanding, on 5th August 2022, client transferred an amount of INR Rs.4,65,30,000/- through RTGS transfer bearing UTR No.HDFCR52022080587149641 to your bank account maintained with HDFC Bank, Banashankari 3rd Stage Branch, Bangalore, after deducting an amount of Rs.4,70,000/- towards tax collection at source, as mandated under the Income Tax Act, 1961,

which you accepted without any demur". Therefore it is necessary to summon the said documents. Hence, in the interest of justice prays to allow the application.

2. On the other hand, the counsel for the complainant filed objections and denied the entire contents of the application. It is specifically stated that the amount has been transferred from the account of the complainant maintained with HDFC Bank, Banashankari 3rd Stage Branch, Bengaluru, but due to typographical error in para No.4 it is mentioned that the amount was transferred to the account of the accused maintaining in the HDFC Bank, Bengaluru: To prove the same the complainant has produced his account statement. Hence, prays to reject the application.

3. I have heard the arguments of advocate for both sides and perused the materials available on record.

4. The following points that arise for my consideration are as under;

POINTS

1. Whether the accused has made out sufficient grounds to summon the documents U/Sec.91 of Cr.P.C. as sought for?

2. What order?

5. Now my answer to the above points is as follows;

1. Point No.1: In the Negative

2. Point No.2: As per final order

for the following;

REASONS

6. POINT No.1:- It is noticed that after filing of this application, the complainant has filed amendment application stating that in para No.4 due to mistake, it is mentioned that 'the account maintained in HDFC

Bank of the accused', but it was maintained by the complainant. Accounts statement of the complainant is also produced. Since the said application is allowed by passing considered order, the question of summoning the account statement as sought for, in the present application does not survive for consideration. Hence, IA is devoid of merits and deserves to be rejected. Hence court proceeds to answer **point No 1 in the Negative.**

7. Point No 2; In view of the findings given in above point, Court proceeds to pass the following;

ORDER

The application filed by the accused U/Sec.91 of Cr.P.C. is hereby rejected."

(Emphasis added)

13. The issue before this Court is, whether these twin orders are in accordance with law.

14. It is trite law that an amendment to the complaint can be permitted in the light of the judgment of the Apex Court rendered in the **BANSAL MILK CHILLING CENTRE** *(supra),* which is relied upon by the learned senior counsel appearing for the respondent. The Apex Court has held as follows:

"**7.** The issue, whether a criminal court has power to order amendment of a complaint filed under Section 200CrPC, is no longer *res integra*. In *S.R. Sukumar* v. *S. Sunaad Raghuram* [*S.R. Sukumar* v. *S. Sunaad Raghuram*, (2015) 9 SCC 609 :

(2015) 4 SCC (Cri) 44] , this Court held as under: (SCC p. 620, para 19)

> "*19.* What is discernible from *U.P. Pollution Control Board case* [*U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632 : (1988) 63 Comp Cas 77] 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."

8. The learned counsel for the respondents sought to distinguish the judgment in *S.R. Sukumar case* [*S.R. Sukumar* v. *S. Sunaad Raghuram*, (2015) 9 SCC 609 : (2015) 4 SCC (Cri) 44] 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. A careful reading of the judgment in *S.R. Sukumar case* [*S.R. Sukumar* v. *S. Sunaad Raghuram*, (2015) 9 SCC 609 : (2015) 4 SCC (Cri) 44] reveals that the said judgment followed the earlier judgment of this Court in *U.P. Pollution Control Board* v. *Modi Distillery* [*U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632 : (1988) 63 Comp Cas 77] . In *Modi Distillery* [*U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632 : (1988) 63 Comp Cas 77] , 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

[*K.N. Modi* v. *State of U.P.*, 1984 SCC OnLine All 349] 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.

9. This Court, while allowing the appeal of the complainant U.P. Pollution Control Board, held as follows: (*Modi Distillery* [*U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632 : (1988) 63 Comp Cas 77] , SCC pp. 689-90, para 6)

> "*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 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 accused concerned 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."

(emphasis supplied)

Further, it was held: (*Modi Distillery* [*U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632 : (1988) 63 Comp Cas 77] , SCC p. 691, para 7)

"*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)

10. This Court allowed [*U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632 : (1988) 63 Comp Cas 77] the appeal and set aside the order [*K.N. Modi* v. *State of U.P.*, 1984 SCC OnLine All 349] 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* [*U.P. Pollution Control Board* v. *Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632 : (1988) 63 Comp Cas 77] 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* [*S.R. Sukumar* v. *S. Sunaad Raghuram*, (2015) 9 SCC 609 : (2015) 4 SCC (Cri) 44] , 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: (SCC pp. 620-21, para 20)

> **"*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* v. *Kunapareddy Swarna Kumari* [*Kunapareddy* v. *Kunapareddy Swarna Kumari*, (2016) 11 SCC 774 : (2016) 4 SCC (Civ) 493 : (2017) 1 SCC (Cri) 396] , 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* [*Kunapareddy* v. *Kunapareddy Swarna Kumari*, (2016) 11 SCC 774 : (2016) 4 SCC (Civ) 493 : (2017) 1 SCC (Cri) 396] followed the holding in *S.R. Sukumar* [*S.R. Sukumar* v. *S. Sunaad Raghuram*, (2015) 9 SCC 609 : (2015) 4 SCC (Cri) 44] .

13. In *Munish Kumar Gupta* v. *Mittal Trading Co.* [*Munish Kumar Gupta* v. *Mittal Trading Co.*, 2024 SCC OnLine SC 1732] , while disallowing an amendment seeking alteration in the date of the cheque from 22-7-2010 to 22-7-2012, this Court, in para 9, held as under: (SCC OnLine SC)

> "*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 Criminal Procedure Code, 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."

15. 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* [*S.R. Sukumar* v. *S. Sunaad Raghuram*, (2015) 9 SCC 609 : (2015) 4 SCC (Cri) 44] , it should be ensured that no prejudice should be caused to the accused.**

16. It will be appropriate to observe that amendments/alterations are not alien to the Criminal Procedure Code. Section 216 CrPC 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.

17. Sections 216 and 217CrPC (Sections 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.

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."

18. 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 CrPC 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."

(Emphasis supplied)

In the light of the facts of the case at hand and the afore-quoted judgment, there is no warrant of interference with the complainant's application seeking amendment of the complaint and the concerned Court allowing the same. What remains is the petitioner's application seeking summoning of the account details in two branches of the same bank.

15. One of the bank accounts, of which the petitioner claims has been amended is allowed, on its merit. Therefore, I do not find any warrant to interfere in the said application being allowed. But, what remains is the HDFC Bank at Banshankari branch, third stage, concerning the alleged deposit of ₹4,65,30,000/- transferred by RTGS.

16. Though the learned counsel for the petitioner submits that he does not hold an account at the Banashankari Branch of

HDFC Bank, 3rd Stage, this is a matter that can only be tested at the stage of evidence. In cases of amount transfer through RTGS, the particular branch through which an account holder's transaction is routed may sometimes appear blurred at the outset, since the amount is ultimately credited to the account of the receiver and any such discrepancy in branch details would be rectified at a later stage.

17. In the light of the fact that all these matters to be thrashed out in evidence, there is no warrant to interfere with the impugned orders of the concerned Court. Therefore, the petition stands dismissed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

NVJ
List No.: 2 Sl No.: 52