

: ORDER ON APPLICATION FILED
SEEKING LEAVE FOR AMENDMENT OF
COMPLAINT:

This is the application filed by learned counsel for complainant seeking permission to amend the complaint and has stated that, due to over sight and typographical mistake, the branch of bank is wrongly appearing as Banahatti instead of Asangi in para No.3 of the complaint. The proposed amendment will not change the nature of complaint and if the application is allowed, no prejudice will be caused to accused and on the other hand, if the application is rejected, complainant would be put to greater hardship and inconvenience which cannot be compensated in terms of money. On these grounds, prayed to allow the application.

2. On the other hand, learned counsel for accused has opposed the application on the ground that, whole proceedings against accused itself is vitiated due to the alleged mistake and the same has appeared in the evidence of complainant including his sworn statement and the notice issued to accused. Moreover, the amendment is not permissible after recording evidence. Among other grounds prayed to reject the application.
3. Heard and perused the materials on record.
4. The point that would arise for my consideration is that:

“Whether complainant has made out sufficient grounds to permit him to amend the complaint as prayed for”?

5. My answer to the above point is in the Affirmative for the following :

: REASONS :

6. The complainant has filed this complaint against accused alleging that, accused has committed offence punishable U/sec.138 of NI Act. It is true that, complainant has filed this complaint on 29.01.2022 and has filed his sworn statement and thereafter, this court proceeded to take cognizance of the offence punishable U/sec.138 of NI Act against accused and has issued summons to him. Thereafter, accused has appeared and was enlarged on bail. The plea of accused is recorded and thereafter, complainant adopted his sworn statement as his chief affidavit and got marked documents on his behalf. Thereafter, case was posted for cross examination of PW.1 and at that time, complainant has filed this application seeking amendment with regard to the branch name appearing in the complaint. The said application is opposed by accused on the ground that, no specific provision is there for amendment and if the application is allowed, it will cause injustice to accused.

7. In support of this application, complainant has relied on decisions reported in (a) **Crl. Appeal No.844/2015** between **S.R. Sukumar Vs. Sunaad Raguram** (b) in **Crl. W.P No.717/2022** between **Mohan S/o Lahanuji Sakore Vs. Kalpatru Agencies and another**, (c) in **2004 Cri. L.J. 4306** between **Bhim Singh Vs. Kan Singh** and (d) in **Crl. Petition Nos.1346 to 1348/2005**. I have perused the entire decisions and it is clear that, amendment can be permitted even at the stage of recording 313 statement of accused and there is no specific provision dealing with the amendment of complaint and there is also no provision preventing the court from allowing the amendment in complainant.

8. It is the specific objection of accused that, amendment if permitted will prejudice his defence and the said contention is not tenable at this stage. It is the complainant who has to prove his case and the accused is at liberty to disprove the same. The question of giving the cheque by accused and with regard to the act of attracting the provisions of sec.138 of NI act is a matter for trial and the same cannot be decided at this instant stage. Moreover, complainant has to prove his case through oral and documentary evidence and the proposed amendment will not change the nature of complaint. Hence, it is just and proper to permit the complainant to amend the complaint only and no amendment can be permitted to carry out in the sworn statement and the notice issued to accused. Hence, I am of the opinion that, complainant has made out grounds to allow the application. Accordingly, I proceed to pass the following:

: ORDER :

The application filed by complainant seeking leave of the court to amend the complaint is hereby allowed.

The complainant is permitted to carry out amendment to the complaint as sought for and shall file amended complaint.

Civil Judge & JMFC, Banahatti.

Accused absent. EP filed and allowed.

For amendment and amended complaint.

Call on 02.09.2024.

Civil Judge & JMFC, Banahatti.

