

Accused present

ORDER ON APPLICATION FOR AMENDMENT

The present application is filed by the complainant to permit complainant to amend the cheque number from 900192 to 910192 in the complaint.

2. In the Application the accused stated that, while drafting complaint due to typographical error, the cheque number in the complaint is wrongly typed as 900192 instead of 910192. That the second number instead of 1 wrongly typed as 0. The said error is due to oversight and typographical error. The said mistake is noticed recently and it is very much necessary to amend the same. If the application is not allowed complainant will be put to lot of hardship and inconvenience and on the other hand the same will not prejudice the case of the accused. The cheque also depicts that the above said number in it. Hence complainant prays to allow the application.

3. On the other hand accused has filed objection to the application by stating that application is not maintainable either in law or on facts. There are no provisions under criminal procedure code for amending the complaint, hence the application filed by the complainant is not maintainable. The above case is now posted for statement of the accused under section 313 of Cr.P.C., at this stage the complainant has filed present application, hence the same is highly belated. The present application filed by the complainant in order to cause wrongful loss to the accused. In case if the application is allowed the complainant is permitted to amend the mistake as alleged by the complainant the nature and fact of the cause will be changed. The reason made out in the application are not genuine. If the application is allowed accused will be put to hardship, loss and injustice and inconvenience. On the other hand no prejudice will be caused to the complainant if the application is allowed.

Hence, accused prays to dismiss the application.

4. Heard both side and perused the materials on record.

5. The following points arises for my consideration.

1) Whether the complainant has made out grounds to allow the application?

2) What order?

6 My findings on the above points are as follows:

Point No. 1 : In the Affirmative

Point No. 2 : As for the following:

REASONS

7. Point No. 1: On perusal of record, it reveals that when the matter was posted for defence evidence complainant has filed application for amendment of cheque number in the complaint as 910192 instead of 900192. In the application complainant stated that while drafting the complaint the typographical

error has been occurred in the complaint. The complainant stated that said mistake is neither intentional nor deliberate. On the other hand the accused contended that there is no provision for amendment of complaint in the criminal procedure code. Hence, accused prays to dismiss the application. The Hon'ble High Court of Rajasthan in the decision reported in ***2004 Cri.LJ 4306 in Bhim Singh Vs Kan Singh*** clarifies that whether such type of mistakes can be rectified by the subordinate court. In the said decision the Hon'ble High Court of Rajasthan held as follows:

“The Courts exist for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under [Section 482 Cr.P.C.](#) is only in favour of High Courts, the subordinate criminal courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific

enabling provisions provided there is no prohibition and no illegality or miscarriage of justice is involved.

8. Thus, this Court is of the view that all the criminal courts are having such an auxiliary power subject to restrictions which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else.

9. For the reasons stated above, the typographical mistakes, which have been pointed out by the complainant petitioner, should have been rectified by the trial court, as trial court has inherent power to rectify such typographical mistakes to do justice between the parties”.

8. The principle laid down in the above decision aptly applicable to the case on hand. In the above decision it is clearly held that if there is any typographical error in the complaint, the trial court can permit the

complainant to amend the complaint, complainant need not file revision under section 482 of Cr.P.C. before the Hon'ble High Court. In the present case the complainant has filed application to amend the cheque number in the complaint as 910192 instead 900192. If the cheque number is amended as prayed in the application no hardship will be caused to accused. On the other hand the complainant will be put to great hardship and loss. Moreover, the Ex.P1 cheque clearly shows that the number of the cheque is 910192. It clearly appears that said mistake is typographical error. In view of the principle laid down in the above citation this court thought it fit to allow the amendment application. In view of my above discussion I answer point No.1 in the Affirmative.

9. Point No. 2: In view of my findings on point No.1 I proceed to pass the following:

ORDER

Application filed by the complainant for amendment of complaint is hereby allowed.

Case posted for amendment of complaint and to file amended complaint copy.

Call on 12/10/2023.

SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.