

**ORDERS ON APPLICATION DATED 23.01.2023 FILED BY THE
COMPLAINANT FOR AMENDMENT OF THE COMPLAINT**

1. The instant application is filed by the Complainant seeking to employ the following amendments in Para No.2 of the complaint -

Proposed amendments:-

- i) During the year 2013 is to be corrected as 'During June 2013'.*
- ii) Loan amount mentioned at 2 places is to be changed as 'Rs.25,00,000/-.'*
- iii) After the name Padmini the words 'on 20.06.2013' is to be inserted.*
- iv) After inserting the words on 20.06.2013, the following sentence is to be inserted viz 'Further on 15.07.2013 a sum of Rs.5,00,000/- has been paid out of the account of Padmini.'*

2. In the affidavit appended to the application, it is stated that the case is instituted seeking punishment against the Accused for the offence under Section 138 of the N.I Act; the case is now posted for cross-examination of the Complainant; some mistakes in the complaint are noticed at this stage which were left out in the complaint due to *bonafide* reasons; there is no intentional delay in filing the application; no hardship would be caused to the Accused as the cross-examination of the Complainant is yet to commence; if the application is rejected, untold hardship would be caused to the Complainant. Hence, the prayer is to allow the application.

3. Resisting the application, the Accused has filed the objections *inter alia* contending that the present complaint itself is defective which is incurable; the Court has no powers to allow any amendments to the complaint; the proposed amendments would

change the very the loan amount and also the cause of action of the complaint; these facts have not been stated in the mandatory notice or the sworn statements and hence cannot be allowed to be added now at this stage where the case stands posted for cross-examination of the Complainant; the Complainant cannot be permitted to add new facts and fill up the *lacuna* in his case; if the proposed amendments are allowed, that would result in exceeding the jurisdiction by this Court. Hence, the prayer is to reject the application with exemplary costs.

4. Heard the Learned Counsels on both sides. Learned Counsel for Complainant in support of his arguments banks on the order of the Hon'ble High Court of Madya Pradesh passed in Misc.Criminal Case. No. 35101 of 2022. On the other hand, Learned Counsel for Accused in support of his arguments banks on (i) Order passed by the Hon'ble High Court of Orrisa in CrI.MC.No. 1218 of 2023, (ii) Order passed by the Hon'ble Supreme Court of India in CrI.Appeal No. 1190 of 2008 and (iii) Order passed by the Hon'ble High Court of Madya Pradesh in Misc.Criminal Case.No. 23534 of 2023.
5. Having heard the rival contentions and on perusal of the materials made available to me, the sole point that would now arise for my consideration is as under -

Whether the Complainant has made out sufficient grounds to allow the application filed seeking amendment of the complaint?

6. Now, my answer to the above point is in the **Negative** for the following reasons-

7. The present private complaint has been instituted against the Accused alleging offence punishable under Section 138 of the N.I Act. The instant application seeking amendment of the Complaint came to be filed at the stage when the case stood posted for cross-examination of the Complainant.
8. The proposed amendments as extracted above would reveal that the specific date & month of the advancement of the loan and also the correct loan amount that is alleged to have been advanced to the Accused are now sought to be added to the complaint.
9. There is absolutely no doubt about the settled position of law being that an amendment to a criminal complaint cannot be sought as a matter of right in the absence of there being any enabling provision in the Cr.P.C. The one authoritative Judgment on the point of allowing the amendment to a criminal complaint is the Judgment of the Hon'ble Supreme Court of India in **S.R SUKUMAR V. SUNAAD RAGHURAM** reported in **(2015) 9 SCC 609** wherein, it is held at Para No.19 and 20 as under -

19. What is discernible from U.P. Pollution Control Board case [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] 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.

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.*

10. On careful reading of the above two paragraphs, it can be unmistakably gathered that amendment to a criminal complaint can be allowed only to a limited extent and on the satisfaction that the same only relates to a simple or curable infirmity causing no prejudice to the Accused and not where such amendment relates to a substantial infirmity. It also becomes necessary to

mention that the case which was under consideration therein was still at the pre-cognizance stage and since the Magistrate therein was yet to apply his mind to the facts of the case, the amendment that was allowed to the complaint was held to be valid.

11. Applying the said ratio to the facts of the present case, it is seen that the present case is at the advanced stage of the cross-examination of the Complainant. The proposed amendments are aimed at introducing the particulars of the specific date and also corrections in respect of the loan amount that is alleged to have been advanced to the Accused. These amendments in my considered opinion do not relate to any simple or curable infirmity but on the contrary, are aimed at curing substantial infirmity which cannot be allowed at this belated stage of the matter. Since the transaction pertains to the year 2013 and the complaint was brought in the year 2019, it also appears that all such facts which are now sought to be introduced by way of the amendment were within the knowledge of the Complainant while issuing the demand notice, filing the complaint, and while adducing evidence by way of sworn statement. Hence, these facts also cannot be termed as ones that are based on subsequent events. The very date of the transaction and the loan amount that the complainant bases his case on is now sought to be changed by way of amendment to the complaint, which in my opinion would definitely change the very nature of the complaint and would certainly have the effect of causing serious prejudice to the defence of the Accused.

12. The principles that would generally apply to the amendments sought in civil proceedings cannot be applied to criminal proceedings. If the amendments, as sought, are allowed, that would certainly result in the Court exceeding its jurisdiction in the backdrop of there being no enabling provision in the Cr.P.C. Hence, the contention that since the Accused is within her rights to cross-examine the Complainant on the above aspects, no prejudice would be caused to her holds no water.
13. All the Judgements relied upon by the Learned Counsel for the Accused have elaborated the aspect as to when and how an amendment to the criminal complaint can be allowed and are found to be squarely applicable to the facts of the present case. Whereas, in the Judgment relied upon by the Complainant, the amendment that was sought was only in respect of some inadvertent mistake in mentioning the name of the bank of the subject matter cheque and noticing that the same is a curable infirmity which can be cured by way of formal amendment, the amendment was allowed. Whereas, in the instant application, serious facts are sought to be introduced by way of amendment which as observed above, cannot be said to be ones that relate to simple or curable infirmity but would relate to substantial infirmity which cannot be allowed at this belated stage. Hence, the application being devoid of any merits is liable to be rejected. In the result, the following -

ORDER

*Application dated 23.01.2023 filed by the Complainant
for amendment of the complaint is hereby rejected.*

Now, no costs.

For Cross of PW-1. Call on 10.06.2024.

**Sd/-
(Rahul Shettigar)
Civil Judge & J.M.F.C,
Sringeri.**