

IN THE COURT OF THE I ADDL., CIVIL JUDGE & JMFC
at Vijayanagara District, Hosapete.

C.C. No: 439/2021

Dated on this the 06th day of December-2025.

Complainant : S. Taheer S/o S.Iqbal

V/s

Accused: Moahammed Ayaz Khan S/o Late Mahboob
Ali Khan

I.A.

Applicant/
Complainant: S. Taheer S/o S.Iqbal

(By Sri. M.N.K., Advocate)

V/s

Opponent/
Accused: Moahammed Ayaz Khan S/o Late Mahboob
Ali Khan

(By Sri. B.Z., advocate)

1.	Provision under which the application is filed	-----
2.	Relief sought for	Amendment of Complaint
3.	The date on which the application is filed	04.12.2024
4.	Number of the application	-----
5.	The date on which the objections are filed by different opponents	29.01.2025
6.	The date on which the orders were passed on the application	06.12.2025

**Order on application filed by Complainant for
Amendment of Complaint**

Complainant has filed this private Complainant against Accused alleging the commission of offence punishable under Section 138 of Negotiable Instrument Act, 1881.

2. Counsel for Complaint has filed this application praying for the relief of amendment of Complaint, as shown in schedule annexed to this application.

SCHEDULE

Add: the following facts in the starting of the Para No.1 in the Complaint That one Zahiruddin Khan.M S/o Late Mohammed Kutubuddin R/at Chintamani, Chickaballapur: District, who is the father-in-law of the Accused herein has executed an agreement of sale dated 04.04.2018 in favour of the Complainant herein through which he offered to sell the above referred agreement of sale 'B' schedule mentioned property to the Complainant for Rs.8,00,000/- (Rupees Eight Lakhs), the Complainant accepted the offer of said Zahiruddin Khan.M and agreed to purchase the same for Rs.8,00,000/- (Rupees Eight Lakhs) further in the above referred agreement of sale the Zahiruddin Khan.M agreed to refund the sale consideration amount of Rs.8,00,000/- along with a sum of Rs.3,50,0000/- (Rupees Three Lakhs Fifty Thousand) in total Rs.11,50,000/- (Rupees Eleven Lakhs Fifty Thousand) to the Complainant in case if he fails to register and handover the agreement 'B' schedule mentioned property to the Complainant herein, even

though the Complainant herein in abundant caution he insisted the Accused herein to execute one document in his name undertaking to re-pay the sale consideration amount of Rs.8,00,000/- (Rupees Eight Lakhs) plus Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand) in total Rs.11,50,000/- (Rupees Eleven Lakhs Fifty Thousand) to him, in case if the Zahiruddin Khan. M fails to perform his part of contract as agreed in the above referred agreement of sale in future since the Zahiruddin Khan.M was introduced by the Accused and as on the date of execution of the above referred agreement of sale the lay-out work in the above referred agreement 'A' schedule mentioned property was in progress, which belongs to the Zahiruddin Khan.M, the Accused herein agreed for the same accordingly,

Add: the following facts in the 3rd line of the existing para No.1 of the Complaint repay Rs.8,00,000/- (Rupees Eight Lakhs) plus Rs.3,50,000/- to the Complainant in case if his father-in-law.

Add: the following facts in the last line of the existing Para No.1

On the date of execution of this document the Complainant has issued a cheque No.935700 drawn on A/c. No.314200010010070 of Karnataka Bank. Ltd., Hosapete for Rs.8,00,000/- in the name of the Zahiruddin Khan.M and same was encashed on 13.08.2018.

Add: the following facts in the 4th line of the existing Para No.2 of the Complaint

Subsequently the Zahiruddin Khan.M failed to perform his part of contract as agreed in the above said agreement of sale as such the Complainant

demanded the Accused to pay Rs.11,50,000/- (Rupees eleven Lakhs Fifty Thousand)

Delete: the following facts from the existing Para No.1 of the Complaint.

Pay the debt of his above said father-in-law to an extent of Rs.11,50,000/- (Rupees Eleven Lakhs Fifty Thousand) to the Complainant which was liable to pay by his father-in-law for having.

3. On the other hand counsel for Accused filed objection to this application.

4. Perused the application wherein it is submitted that Complainant is examined before the Court as PW1 who got Ex.P.1 to Ex.P.6 documents marked in his favour and he is cross examined by Accused for twice and after completion of his cross examination Accused was subjected for his examination U/Sec. 313 of Code of Criminal Procedure, 1973, and later he failed to adduce any defence evidence and now the stage is posted for arguments and that stage counsel for Accused has filed an application U/Sec.311 of Code of Criminal Procedure, 1973, praying for the relief of recalling PW1 for his further cross examination which was allowed by this Court on 09.10.2024 and the case is posted for further cross examination. Further that in the last week of November 2024 when his counsel was preparing for further cross examination, he came to know that there is no pleading concerning agreement of sale dated

04.04.2018 which was duly executed by the father in law of Accused in his favour and non production of said original agreement of sale and further regarding payment of sale consideration amount of Rs.8,00,000/- to the father in law of Accused subsequent to execution of agreement for advance payment executed by Accused in his favour. In connection with aforesaid agreement of sale and that non pleading of these facts is not an intentional one and that in the interest of justice this application needs to be allowed by this Court and thereby prayed to allow this application.

5. On the other hand having denied the grounds urged in this application, counsel for Accused contended that this application is filed at this stage only with an intention to procrastinate the litigation without there being any justifiable grounds and that Complainant has failed to exercise due diligence in bringing this amendment at earlier stages of this case.

6. Further that the proposed amendment is in such a nature which amongst to introduction of whole new ground and new Complaint with new cause of action and that these facts were not part of initial notice issued to Accused by Complainant. That the proposed amendment includes extraneous and irrelevant details which are not connected to the allegations made against Accused concerning the offence punishable under section 138 of Negotiable Instrument Act, 1881, and it

introduce new facts and shifts the case's basis entirely. That the proposed application is barred by limitation period U/Sec.142(b) of Negotiable Instrument Act, 1881 and thereby Complainant is debarred from making such amendments in Complaint as it is not permissible U/Sec.468 of Code of Criminal Procedure, 1973. Lastly that this application is not filed on the grounds of typographical corrections rather Complainant is attempting to introduce a whole new transaction and withdrawal of admissions made in Complaint and thereby it violates the rights of Accused as it changes the whole case unfairly and thereby prayed to dismiss this application.

7. Heard both the counsel and perused the relevant documents placed on record.

8. The following points arise for my consideration:

1. Whether Complainant has proved that the proposed amendment is simple infirmity which is curable by means of formal amendment and the same is just and necessary for complete adjudication of this case?

2. What Order?

9. My findings to the aforementioned points are as follows:

Point No.1- In Negative

Point No.2- As per my final order to the following;

REASONS

10. Point No.1:- On careful perusal of both the application and objection filed by both the parties, as well as private Complaint and the evidence adduced by Complainant, in connection with proposed amendment this Court noticed that in Para No.1 of private Complaint, Complainant has referred to two agreements which are dated 12.04.2018 and 04.04.2018 and from perusal of this paragraph it becomes quite clear that Complainant is alleging the occurrence of transaction i.e., sale agreement between himself and father-in-law of Accused and said Accused having undertaken to pay the debt of his father-in-law to an extent of Rs.11,50,000/- for which he was liable to pay in case of failure from his part to perform the contract as agreed under sale agreement dated 04.04.2018. Now in connection to this observation when this Court perused the proposed amendment, it is noticed that Complainant is attempting to elaborately narrate the execution of alleged sale agreement and about the alleged liability of Accused including the payment of amount of Rs.8,00,000/- which was paid by Complainant to the father in law of Accused as advance sale consideration amount in connection with said sale agreement for the purchase of property and further Complainant is praying for deletion of the following sentence in Para No.1 of Complaint;

“Pay the debt of his above said father-in-law to an extent of Rs.11,50,000/- (Rupees

Eleven Lakhs Fifty Thousand) to the Complainant which was liable to pay by his father-in-law for having”.

10.1 Now from collective perusal of the contents mentioned in private Complaint as well as in proposed amendment, this Court is of the opinion that Complainant has not made out sufficient grounds to explain to the Court as to for what purpose he is praying to bring these amendments to the private Complaint and moreover since there is no specific provision under Code of Criminal Procedure, 1973, for amendment of Complaint, as per the precedents of Hon'ble Apex Court and Hon'ble High Court of Karnataka, only curable and typographical errors can be allowed to be amended by Complainant, but in this case, Complainant is not proposing for any such amendments which are in the nature of typographical errors or which is in the nature of curable and further more these facts which are mentioned in proposed amendment was known to Complainant much earlier to the filing of this Complaint, under such circumstances it is his burden to narrate to the Court as to why he failed to bring these facts to the notice of Accused at the time of issuing legal notice and also failed to mention the same in private Complaint, but in this case Complainant has failed to reasonably explain the same and thereby he has failed to narrate to the Court as to how the proposed amendment is just and necessary for the proper adjudication of the case. Under such circumstances this Court

is of the opinion that, this case is not fit for allowing the proposed amendment. Further Complainant has relied on the decision passed by Hon'ble Apex Court in ***Bansal Milk Chilling Centre V/s. Rana Milk Food Private Ltd., & Another*** and Accused has relied on the decision passed by Hon'ble Apex Court in ***S.R. Sukumar V/s. S.Sunaad Raghuram***.

10.2 When perused the decision relied by Complainant, this Court noticed that in the said decision the amendment which was allowed was concerning the substitution of product name which was supplied by Complainant i.e., inadvertently Complainant had mentioned that he was supplying the produce of 'Desi Ghee' instead of 'Milk', but as discussed above the proposed amendment is not in such a nature and when perused the decision relied by Accused this Court noticed that the Hon'ble Apex Court has clearly explained as to under what circumstances amendment can be allowed and the same is extracted as hereunder;

“18. What is discernible from the U.P. Pollution Control Board's case is that 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.”

10.3 From perusal of aforesaid decisions in connection with the facts and circumstances of this case, this Court is of the opinion that the proposed amendment do not relate to a simple infirmity which is curable by means of formal amendment and even though Complainant was aware of said facts he has failed to bring the same to the notice of Accused at the earlier point of time and mention the same in Complaint, hence if at this juncture the proposed amendment is allowed the same will cause prejudice to Accused. Hence with this view this Court proceeds to answer this **Point No.1** in **Negative**.

11. Point No.2 : Keeping in mind the discussion made above, this Court proceeds to pass the following:

ORDER

The application filed by counsel for Complainant praying for the relief of amendment of Complaint is hereby dismissed.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open Court, this 06th day of December, 2025).

I Addl. Civil Judge & JMFC.,
Vijayanagara District, Hosapete.