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**IN THE COURT OF CIVIL JUDGE AND JMFC AT YADGIRI**

Present: Sri. Arun Chougule.,
B.A., LL.B,[Hons.]

Civi Judge and JMFC, Yadgiri.

Dated this the 11th day of March-2025.

C.C.No.1155/2024

COMPLAINANT: Sri. Dinesh Sharma S/o. Suryaprakash
Sharma, Age: 56 years, Occ: Business,
R/o Ganesh Nagar, Gunj Area, Yadgiri,
Tq: & Dist: Yadgiri.

(By Sri. R.C.S advocate)

//V/s//

ACCUSED: Sri. Rajkumar Khandelwal S/o. Mohanlal
Khandelwal, Age: 58, Occ: Business,
R/o: Kajgar Wadi, Yadgiri,
Tq: & Dist:Yadgiri.

(By Sri. H.M.P. advocate)

**ORDER ON APPLICATION FILED UNDER SECTION 311 OF
CR.PC.**

The complainant has filed the present application seeking permission to amend the complaint.

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2. The complainant has sworn to an affidavit in support of the application stating that he has filed the complaint against the accused U/s 138 of the Negotiable Instruments Act in view of dishonor of cheque bearing No.017740 dated 30.01.2024 drawn on State Bank of India, ADB branch, Yadgiri issued by the accused for a sum of Rs.8,46,500/- towards discharge of debt. That, the amount of the cheque is correctly mentioned as Rs.8,46,500/- in the demand notice got issued by the complainant. However, in the complaint, sworn statement affidavit and chief examination affidavit of the complainant, the amount is wrongly typed as Rs.8,46,000/- in two places and as Rs.3,00,000/- in one place, needs to be rectified and amended. The said mistake was due to inadvertence and the same was unintentional. That, the cheque number, the date of the cheque and the amount of the cheque are correctly mentioned in the demand notice. As such, it is just and necessary to amend the complaint. Hence, the complainant prays to allow the application.

3. After filing of the application, the complainant has filed a memo dated 29.1.2025 seeking to treat the application

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as one filed U/s 348 of BNSS instead of Section 311 of Cr.P.C.

4. The accused has filed objections contending that the complainant has already got examined himself as Pw.1, wherein he has admitted that he knows the contents of the complaint and chief examination affidavit and the same are true and correct. As such, question of carrying out amendment in the complaint does not arise. That, the complainant has filed the application with an intention to drag on the case. On these grounds, the accused prays to reject the application with costs.

5. I have heard arguments of learned counsel for both parties.

6. The complainant, in support of his application, is relying upon the following rulings:

- Judgment of Hon'ble Rajasthan High Court rendered in the case of Hawa Singh Vs. Madan Lal decided on 17.08.2023.

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- Judgment of Hon'ble Panjab and Haryana High Court rendered in the case of Gurnam Singh Vs. Bittu Singh decided on 10.01.2023.
- Judgment of Hon'ble Andhra Pradesh High Court rendered in the case of M/s Bangi Linganna Vs. State of AP decided on 27.01.2020.

7. On the other hand, the accused is relying upon the judgment of Hon'ble Madhya Pradesh High Court rendered in the case of **Anilkumar Vs. Balawanth Singh Sethi** decided on 18.03.2024.

8. The points that would arise for my consideration are as follows;

1. Whether the present application deserves to be allowed?
2. What order?

9. This Court proceeds to answer the above points as under:

Point No.1: In the Affirmative.

Point No.2 : As per final order for the following;

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REASONS

10. **POINT NO.1**: The complainant has filed the present private complaint U/s 138 of the Negative Instruments Act.

10.1 The case of the complainant is that himself and the accused are having acquaintance with each other for more than 10 years and the accused, on the basis of said acquaintance, borrowed an amount of Rs.8,46,500/- from him on 29.10.2021. Thereafter, the accused issued a cheque bearing No.017740 dated 30.01.2024 drawn on State Bank of India, Yadgiri branch for sum of Rs.8,46,500/- for repayment of the loan amount. The complainant presented the said cheque for encashment to his banker, which came to be returned unpaid with a memo dated 31.01.2024 stating that the account closed. As such, the complainant got issued demand notice dated 27.02.2024, which was served upon the accused on 29.02.2024 and the accused got issued reply notice denying averments of the notice. Hence, the complainant was constrained to file the present complaint.

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10.2 This Court having taken cognizance of the offence issued summons to the accused, who appeared through his counsel and got himself enlarged on bail. Accordingly, plea of the accused was recorded, who pleaded not guilty and submitted that he has defense to make. Thereafter, the complainant got examined himself a Pw.1 on affidavit. When the matter was posted for his further chief-examination, the complainant has filed the present application seeking permission to amend the complaint.

10.3 By way of proposed amendment, the complainant is intending to rectify the amount of the cheque as Rs.8,46,500/- which is wrongly mentioned in one place as Rs.3,00,000/- and in two places as Rs.8,46,000/-. Admittedly, there is no provision either in Cr.P.C or BNSS for seeking amendment of the private complaint. However, Hon'ble Madhya Pradesh High Court in M/s. Bangi Linganna's case (Supra), relied upon by the complainant, has held as under:

The Apex Court in S.R. Sukumar v. S. Sunaad Raghuram¹ held as follows:

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Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints."

It is further held as under:

Thus, from the conspectus of the law laid down in the above cited judgments of the Apex Court and also the judgments of the Rajasthan High Court, the legal position is perspicuous that notwithstanding the fact that there is no provision in the Cr.P.C. enabling the parties to seek permission of the Court to amend a complaint in a criminal case, filed either under Section 138 of the N.I. Act or under any of the provision of law, when the Court finds that the mistake is a bona fide mistake and when the amendment sought is essential for effective adjudication of the controversy in the lis and to render substantial and real justice to the parties and when it requires to avoid multiplicity of proceedings that in all such appropriate cases, that the Courts can allow the parties to amend the pleadings to cure the curable infirmities by according necessary permission to that effect and particularly when no prejudice is caused to the opposite party by permitting the party to amend the complaint. Only a formal application is required to be filed for the said purpose.

10.4 Further, Hon'ble High Court of Panjab and Hariyana in Gurnam Singh's case (Supra), relied upon by

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the complainant has, referred to following judgments of Hon'ble Supreme Court of India:

Hon'ble The Supreme Court of India in the case of Rajendra Prasad vs. Narcotic Cell (1999) 6 SCC 110 held that, "The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone." Similarly a wrong cheque number got mentioned in the complaint and the affidavit due to typographical mistake, which when came to be noticed, led to filing of the application for rectification/correction therein and it was not a case set up by the accused-respondent that complainant was otherwise not diligent in pursuing his case or in producing all other documents giving correct cheque number.

The Courts below were also required to keep in mind that the object underlying Section 311 CrPC was to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or 6 of 11 Neutral Citation No: 2023: PHHC:003184 CRM-M-32545-2018 leaving an ambiguity in the statements of the witnesses as was held in the case of Hanuman Ram v. The State of Rajasthan &Ors., 2008(4) RCR (Criminal) 823, by Hon'ble The Supreme Court of India.

The law as enunciated being that the power under Section 311 of Cr.P.C. can be exercised at any stage of the proceedings for the just decision of the case. The Court is to ensure that there is no miscarriage of justice.

The prosecution and trial against the accused cannot be allowed to be defeated merely because of a technical and curable defect in the complaint as has been held by Hon'ble The Supreme Court of India in U.P. Pollution Control Board v. Modi Distilleries, (1987) 3 SCC 684. Further that curable infirmities and those which do not change the original nature of the complaint can be permitted to be carried out by way of

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amendment and no prejudice could be caused to the other side was held in S.R.Sukumar v. S. Sunaad Raghurav, (2015) 9 SCC 609.

10.5 The above discussion shows that, though there is no provision either in Cr.P.C or BNSS seeking amendment of complaint, the Court can allow application for amendment in appropriate cases when the mistake in the complaint is a bona fide mistake.

10.6 Now the question is whether the wrong mention of the cheque amount in three places in the present complaint was a bonafide mistake and the same was a typographical error. Ex.P-1 is the cheque drawn for an amount of Rs.8,46,500/-. Ex.P-2 is the bank return memo, wherein the cheque amount is mentioned Rs.8,46,500/-. Ex.P-3 is the copy of demand notice, wherein also the cheque amount is correctly mentioned as Rs.8,46,500/-. Even in the complaint at several places the cheque amount is mentioned as Rs.8,46,500/-. However, it is only at three places the cheque amount is wrongly mentioned instead of Rs.8,46,500/-. As such, this Court is of the opinion that, when the cheque amount is correctly mentioned in the bank return memo, demand notice and even in the

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complaint at several places, the wrong mention in three places in the complaint is only a bonafide mistake and not a deliberate one. When it is found that a mistake in the cheque amount has crept in due to typographical error, it is just and necessary to permit the complainant to rectify the same. At this stage, it is relevant to note that, in the judgment of Hon'ble Madhya Pradesh High Court rendered in Anilkumar's case (Supra) relied upon by the accused, the amendment was pertaining to the date of the cheque. The Hon'ble High Court in the said case has held that mistake in the cheque number and the date of cheque cannot be corrected by way of an amendment. However, in the present case, the amendment is not pertaining to either the cheque number or the date of the cheque. Hence, this Court is of the humble opinion that the judgment relied upon by the accused is not applicable to the case on hand.

10.7 In view of above discussion, point No.1 is answered in the Affirmative holding that the application deserves to be allowed.

11. **POINT NO.2:** In the light of the above discussions, this Court proceeds to pass the following:

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**ORDER**

Application filed by the complainant U/s 311 of Cr.P.C dated 07.01.2025 is hereby allowed and the complainant is permitted to amend the complaint.

The complainant is directed to amend the complaint and to furnish amended complaint on or before the next date.

(Dictated to the stenographer, typed by him, and after corrections, pronounced in the Open Court on this the **11th day of March-2025.**)

(ARUN CHOUGULE)
CIVIL JUDGE AND JMFC,
YADGIRI.