

SCC No. 120/2021
Parmeshwar Vs. Ramesh
CNR No. MHAU110002672021

ORDER BELOW EXH.19

By this application complainant prays for amendment in the complaint name and address of accused No.3.

2. The complainant contended that, he has wrongly mentioned the name of accused No.3 as Archana Ramesh Harne r/o. Phulambri T.Q. Phulambri Dist. Aurangabad. After appearance of accused No. 1, 2, and 4 on the basis of true copy of Adhar card filed by accused of accused No.3. The complainant reveals that the name of accused No. 3 is Muktabai Ramesh Harne R/o. Pokhri Tq. Phulambri. He further contended that due to lack of knowledge about name and address of accused No.3 he wrongly mentioned her name and address in the complaint. Hence he prayed for amendment in the complaint.

3. On the back leaf of the application accused No. 1, 2 and 4 filed their say. They contended that, there is no any express provision provided in criminal procedure code for amendment. The

complainant mentioned the name and address of accused No.3 in NCR report as mentioned in the complaint. This application is not tenable. Hence he prayed for rejection of application with the costs.

4. Heard both the Ld. Advocates.

5. Ld. Advocate of complainant in support of his application relied on Jud. Of Hon'ble Apex court in S. R. Sukumar Vs. S. Sunanda Raghuram Cri.A. No. 844/2014, decided on 2/7/2015. He further argued that, the above cited judgment Hon'ble Apex Court allow the amendment in the complaint. Therefore, his application is deserve to be allowed. On other side Ld. Advocate for accused argued that this application is not tenable in the eys of law hence deserve to be rejected. Perused record of the complaint and roznam, read the application and say. From its appear that complainant filed this complaint against accused No. 1 to 4 in which he has mentioned name of accused No. 3 Archana Ramesh Harne, r/o. Phulambri Tq. Phulambri. After that, verification of complainant is recorded on 10/3/2023. after verification , my Ld. Predecessor by passing order below Exh.1

issue process against No. 1 to 4 u/sec. 323, 504, 506 r/w 34 of I. P. C. After service of summons accused No.1 , 2, 3 are appeared on 12/10/2021, same day accused are released on bail.

6. Read the citation on which complainant relied. In cited case, the complainant was filed complaint against the accused u/sec. 120 -B, 499 and 500 of I. P. C. The complainant was filed amendment application after recording his statement but before taking cognizance and order of issue process against the accused. In that situation Hon'ble Apex Court in para No. 19 held that, 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, 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 order 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 of India. This citation with due respect of Hon'ble Apex Court is not applicable in the case in hand. Already in this complaint process is issued, other accused are appeared. Moreover, the name and address of accused No.3 mentioned in the complaint and N.C. report filed along with Exh.3 are same. If application allowed it definitely prejudice to the accused. The complainant stated name and address of accused No. 3 before police as well

as before court. The reason mention in application for wrongly mentioned name of accused No.3 is not appropriate. Therefore, considering all above aspects, in view of this court this application is not tenable and entitle for reject. Hence pass following order.

ORDER

1. Application Exh.19 is rejected.
2. Parties bear their own costs.

sd/-

Date : 4/1/2024.

(Dhananjay S. Deore)
Judicial Magistrate F.C.
Court No.2, Phulambri.

CERTIFICATE

affirm that the contents of this P.D.F. File order are same, word to word, as per the original order.

Name of the Stenographer : S.D.Chavan
Name of the Court : C.J.J.D. & J.M.F.C., Court
No. 2 Phulambri
Date of order : 04.1.2024
Original copy of order signed by
the presiding officer on : 04.1.2024
PDF copy of order uploaded on: 04.1.2024