

MHLA120000102023 	<u>ORDER PASSED BELOW</u> <u>EXH.NO.198</u>
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This is the application filed by the complainant for amendment in para 3 of the plaint. He pleaded that he had paid/transferred total amount of Rs.7,26,00,000/- to the accused. Although, out of the said total amount, the complainant has furnished details about the payment of Rs. 4,85,00,000/- by disclosing cheque numbers and its amount. But, the details of remaining amount have not pleaded. For want of such details there is some infirmity in the complaint and that may lead to some adverse inference/ findings against the complainant. Therefore, its absolute necessity to plead the said details to clear or remove doubts and to explain the mode and details about the said amount paid by complainant to the accused.

2. The accused filed his say at Exh.202. He strongly objected this application on the ground that this application is not tenable. There is not provision in Criminal Procedure Code to amend the complaint, filed u/sec. 200 of Cr.P.C. There is not provision to seek amendment as claimed after the cognizance of complaint taken by the court. The contentions in this application shows that the alleged amendment as sought for is not for correcting minor errors like typographical mistake. The said amendment is claimed to fill up the lacuna in the pleading and to alter the substance of original allegations. Thus, it is not formal amendment. On complaint, the court take cognizance and issued process against accused. The plea of accused was recorded. The evidence of affidavit of complainant was

read and recorded on 19.03.2024 and now the matter is posted for further chief and cross examination. The alleged amendment would cause great prejudice the accused. The amendment is not claimed at appropriate stage i.e. before the cognizance taken by the court. The discretion to allow the amendment are only for typographical errors to be corrected. The proposed amendment alter the substance of original plaint. Therefore, it is liable to be rejected.

3. Heard the Ld. Advocate of respective parties at length.

4. The Ld. Advocate for complainant argue that no prejudice would cause to the accused by this amendment. The proposed amendment did not alter the nature and character of complaint. It was curable irregularity. In support of his argument he relied on following judgments –

- i) In BANSAL MILK CHILLING CENTER VS. RANA MILK FOOD PVT. LTD., AIR 2025 SC 3450.
- ii) RAMDEVBABA DEVELOPERS AND BUILDERS VS. SYED MAZARUDDIN SYED SHABUDDIN AIR 2023 BOMBAY 685

5. However, the Ld. Adv. for accused argue that the application is not tenable. There is no provision to seek amendment in the complaint filed u/sec. 200 of Cr.P.C. after the cognizance of complaint taken by the court. In support of his argument, he relied on following judgments -

- i) M/S. NIRAJ CEMENT STRUCTURALS PVT. LTD. VS. BOMBAY JCB EARTH MOVERS 2008, ALL MR(Cri) 3398
- ii) CHHAYAKANT ACHARYA VS. SAMITAV PANI 2023(3) Cri CC42

6. Perused the record and documents produced alongwith Exh.4 and 65. In para 3 of the complaint, the complainant pleaded how he executed the transactions with accused. He stated that accused no.2 and 3 has personally contacted to the complainant and issued five letters demanding the amount of Rs. 1,00,00,000/- each in the name of complainant's firm. The accused persons assured and promised to the complainant that they will supply the sugar product during the season 2021 – 2022 at the rate of Rs. 2900/- per quintal. Considering the business relations and dire financial need of accused, complainant has shown his readiness to assist the accused and accordingly the complainant advanced the amount of Rs. 4,85,00,000/- by cheques. He further pleaded the agreement was executed in respect of Rs. 5,00,00,000/-. The complainant further assisted financially by advancing an amount of Rs. 2,26,00,000/- on time to time. Therefore, total amount of Rs. 7,26,00,000/- transferred on the account of accused which was received by them. The complainant furnished the details of Rs. 4,85,00,000/- in para 3 of the plaint. The details of sum of Rs. 7,26,00,000/- is not furnished by him but, in the complaint, the verification and legal notice, it had averred the amount of Rs. 7,26,00,000/- given to the accused. In the present case, the verification of complainant has been recorded and process had been issued. Plea of accused has also been recorded. The cheque in question was issued for Rs. 1,00,00,000/-. The complainant furnished details of Rs. 4,85,00,000/- paid out of Rs.7,26,00,000/- by giving cheque numbers and the bank name out of Rs. 7,26,00,000/-. Here I relied on judgment in BANSAL MILK CHILLING CENTER VS. RANA MILK FOOD PVT. LTD., AIR 2025 SC 3450. It is held by the Hon'ble Supreme Court that

amendment is moved at the stage after summons was issued to the accused, the chief-examination of complainant had concluded and when cross-examination was abated. The amendment made is also only with regard to the products supplied. The error occurred in the legal notice was carried in the complaint also. No prejudice would be caused to the accused. The actual facts will have to be thrashed out at the trial. As to what impact the amendment will have on the existence of debt or other liability is for the trial court to decide based on the evidence. It was a curable irregularity. It could not be said that by allowing the amendment at a stage when the evidence of complainant was incomplete, failure of justice good occasion.

7. The record disclose that this is the only simple infirmity. It is a formal amendment. The amendment is claimed by the complainant in complaint filed u/sec. 138 of N.I. Act. The said amendment sought after filing of chief-examination complainant. Now, the matter is posted for further chief and cross-examination of complainant. As held in BANSAL MILK CHILLING CENTER's case the proposed amendment is sought or relates to the simple infirmity which is curable by means of formal amendment. By allowing such amendment no prejudice would be caused to other side.

8. The proposed amendment showing that the complainant intended to elaborate the relevant facts to correct curable defect or infirmity in payment. The details or actual facts been have to be thrashed out at the trial. What impact of amendment will have on the existence of debt or other liability is to decide and based on the evidence. At this juncture, it will not be just to decide the existence of

debt or other liability. Here I relied on judgment in RAMDEVBABA DEVELOPERS AND BUILDERS VS. SYED MAZARUDDIN SYED SHABUDDIN AIR 2023 BOMBAY 685 wherein the Hon'ble Bombay High Court held that the proposed amendment showing that it was intended to elaborate the relevant facts to correct curable defect or infirmity. Since the proposed amendment was intended to elaborate material facts, it could not be said to be prejudicial to the accused.

9. In M/S. NIRAJ CEMENT STRUCTURALS PVT. LTD. VS. BOMBAY JCB EARTH MOVERS 2008, ALL MR(Cri) 3398, the Hon'ble Bombay High Court held that the amendment sought for collecting the name of bank mentioned in complaint. Complainant had averred in this complaint that the cheques were drawn on particular bank. Verification has been record and process has been issued. Plea of accused has also been recorded. No amendment could be allowed in complaint at such and advanced stage. Further change of name of bank in complaint results in substantial change. Therefore, such amendment can not be permitted. However, in CHHAYAKANT ACHARYA VS. SAMITAV PANI 2023(3) Cri CC42, the Hon'ble Orissa High Court held that change of loan amount. Reason stated to be typographical mistake. The loan amount can not undergo a change because the same forms very basis of complaint. Complainant can not be permitted to change the very foundation of his case midway during trial. In the present case the complainant already pleaded the sum of Rs. 7,26,00,000/- paid to the accused in his complaint, legal notice, verification and chief-examination. Therefore, by the proposed amendment, no substantial changes or no prejudice will be caused to the accused. Therefore, the above rulings referred by the accused not

helpful to the accused. The facts in the above two judgments are different from this case.

10. The pleading in para 3 of the plaint, incomplete details of the amount paid by the complainant to accused are furnished. The complete details needs to bring on record. If the complainant fails to bring it on record, may lead to some adverse inference/ findings against the complainant. Therefore, the complainant has opportunity to correct the said details. Thus, the conclusion of right decision of complaint on merit, the amendment is necessary. No prejudice will be caused to the accused by this amendment. Considering the documents produced on record alongwith Exh.04 and 65, the amendment is appears necessary for just decision of case. Hence, the order-

Order

1. The application at Exh.198 is allowed.
2. Complainant to carry out the amendment in para 3 of the plaint by furnishing details as sought withing 14 days and submit amended copy.

Date : 17.07.2026
Place : Nilanga.

(Smt. A. S. Gunjawate)
Judicial Magistrate F. C., Nilanga
District Latur.
(Court No.01)