

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 299 of 2020
with
I.A. No. 4223 of 2021

Dr. Nishikant Dubey Petitioner
Versus
The State of Jharkhand & Ors. Respondents.

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. R.S. Mazumdar, Sr. Advocate
: Mr. Prashant Pallav, Advocate.

For the Respondent Nos.

1, 3 and 4 : Mr. P.A.S. Pati, S.C.-IV.
For the Respondent No. 2 : Mr. Akashdeep, Advocate
For the Respondent No. 5 : Mr. Jitendra Shankar Singh, Advocate.

08/ 09.09.2021 This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic.

2. This matter was taken up for the first time on 20.01.2021 and the respondent No. 5 was noticed and interim protection was granted in favour of the petitioner. On 04.03.2021, the State took time and the matter was adjourned. On 22.4.2021 further the matter was adjourned, as the resolution of the Jharkhand State Bar Council was there not to work in view of sudden surge of Covid-19 pandemic. On mentioning this matter was again taken up on 01.07.2021 and on that day I.A. No. 2864 of 2021 was pressed by Mr. P.A.S. Pati, learned counsel appeared for the State, wherein prayer for adjournment was made and the said I.A. was allowed and the interim order was extended and the matter was directed to be listed after three weeks. On 26.8.2021, one I.A. was pressed by Mr. R.S. Mazumdar, learned senior counsel, bearing I.A. No. 4223 of 2021, wherein the prayer for challenging the chargesheet and cognizance order have been made. The matter is adjourned, as the copy of the said I.A. was not served upon the learned counsel appeared for respondent No. 5. It was directed that the copy of the said I.A. be served upon the respondent No. 5 and direction was passed to list this matter on 09.09.2021 (today).

3. I.A. No. 4223 of 2021 has been filed for quashing of the chargesheet dated 24.07.2021 and the cognizance order dated 26.07.2021.

4. Mr. Mazumdar, learned senior counsel appearing for the petitioner submits that initially the FIR in question was challenged in this writ petition and the interim order has been passed in favour of the petitioner and during the pendency of this petition, the chargesheet dated 24.07.2021 was filed against the petitioner, under Sections 417 and 420 of the Indian Penal Code and Section 171G of the Representation of the

People Act, 1951. He submits that since the FIR itself was under challenge and during the pendency of this petition two developments have taken place, it was necessitated to file this interlocutory application for challenging the same in the petition by seeking amendment.

5. Preliminary objection to this I.A. has been filed by the respondent Nos. 1, 3 and 4 on the ground that there is no provision in the Cr.P.C. of seeking amendment in the pleading that is why this cannot be allowed. It has been further objected that only challenge is there and amendment is not prayed.

6. Mr. Jitendra Shankar Singh, learned counsel appearing for the O.P. No. 5 fairly submits that so far as the amendment is concerned he is not opposing, but his objection is with regard to non mentioning the word amendment in the prayer portion of the said I.A.

7. Mr. Mazumdar, learned senior counsel appearing for the petitioner submits that inadvertently the only word 'amendment' has not been reflected in the prayer portion of the said I.A., for which, supplementary affidavit has been filed, wherein in para-2 it has been mentioned that the word amendment has been missed out in typing. He further submits that in the light of the further developments and the Court is sitting under Article-226 of the Constitution of India can allow the amendment and he relied upon a judgment of the Hon'ble Supreme Court in the case of ***Kunapareddy @ Nookala Shanka Balaji Versus Kunapareddy Swarna Kumari & Anr.***, reported in (2016) 11 SCC 774, wherein paras-16 and 17 read as under:-

*“16. We understood in this backdrop, it cannot be said that the court dealing with the application under the DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events (escalation of prices in the instant case) or to avoid multiplicity of litigation, court will have the power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that Respondent 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances. The pronouncement on this is contained in the recent judgment of this Court in *S.R. Sukumar v. S. Sunaad**

Raghuram—in the following paragraphs: (SCC pp. 620-21, paras 18-20)

“18. 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. In U.P. Pollution Control Board v. Modi Distillery, wherein the name of the company was wrongly mentioned in the complaint, that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows: (SCC pp. 689-90, para 6)

‘6. ... The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in Para 2 of the complaint so as to make the controlling company of the industrial unit figure as the accused concerned in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Ltd., the company owning the industrial unit, in place of Modi Distillery. ... Furthermore, the legal infirmity is of such a nature which could be easily cured.’

19. What is discernible from U.P. Pollution Control Board case 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 of India.”

17. What we are emphasising is that even in criminal cases governed by the Code, the court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.”

8. Learned senior counsel further submits that in this judgment one of the subject matter was about the amendment and the Court after considering that allowed the amendment in the criminal proceeding.

9. Learned senior counsel also relied upon the judgment in the case of **S.R. Sukumar Versus S. Sunaad Raghuram**, reported in (2015) SCC 609, wherein the Hon'ble Supreme Court in paras-18 and 19 held as follows:-

“18. Insofar as merits of the contention regarding allowing of amendment application is concerned, 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. In U.P. Pollution Control Board v. Modi Distillery wherein the name of the company was wrongly mentioned in the complaint, that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows: (SCC pp. 659-60, para 6)

“6. ...The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief

Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in Para 2 of the complaint so as to make the controlling company of the industrial unit figure as the accused concerned in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery. ... Furthermore, the legal infirmity is of such a nature which could be easily cured.”

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10. By way of placing these two judgments, learned senior counsel submits that the prayer is for amendment and the nature of the case has not been changed, no prejudice has been caused to the other side.

11. It is an admitted fact that interim order was passed in favour of the petitioner and the matter was adjourned on several dates on prayer of learned counsel for the State, which was indicated (supra). The chargesheet was submitted on 24.7.2021 and the cognizance was taken on 26.07.2021 and the FIR is already under challenge in this writ petition, it is desirable in the interest of justice and to avoid the multiplicity of petition, this I.A. may be allowed.

12. In the I.A. the challenge of chargesheet and cognizance order are already there and the only word ‘amendment’ is missing in this I.A., for which, supplementary affidavit has been filed, wherein it is stated that the word ‘amendment’ has been missed out in typing. But on perusal of the prayer in the I.A., it is crystal clear that the petitioner wants to challenge the chargesheet and cognizance order and it has been supplemented by way of filing supplementary affidavit that the amendment is sought for.

13. In the interest of justice and without entering into the technicality and also in view of the fact that the Court is sitting under Article-226 of the Constitution of India and the petitioner is only challenging the chargesheet dated 24.7.2021, submitted under Sections

417 and 420 of the Indian Penal Code and Section 171G of the Representation of the People Act, 1951 and the cognizance order dated 26.07.2021 and also the nature of proceeding so far Representation of People Act is concerned is civil, which has been the subject matter in the case of *Kunapareddy @ Nookala Shanka Balaji (supra)*, the I.A. No. 4223 of 2021 is allowed in the interest of justice and also to curtail the multiplicity of litigations.

14. Learned counsel for the petitioner is directed to make out the necessary correction in the petition within one week. Petitioner is also directed to file the amended petition within a week.

15. The copy of the amended petition shall be served by learned counsel for the petitioner upon Mr. P.A.S. Pati, learned counsel appearing for respondent Nos. 1, 3 and 4 and also upon Mr. Jitendra Shankar Singh, learned counsel appearing for respondent No. 5.

16. Mr. P.A.S. Pati and Mr. J.S. Singh will respond to the amended petition within a further period of three weeks thereafter.

17. The aforesaid interlocutory application is allowed and disposed of.

18. The Court has perused the cognizance order dated 26.07.2021, wherein the concerned Court has taken care by way of recording that it would be appropriate to keep this file in this Court till final disposal of the Criminal writ petition and appropriate step will be taken as per the final outcome of the said writ petition.

19. The interim order 20.1.2021 is extended till the next date.

20. Post this matter after four weeks.

(Sanjay Kumar Dwivedi, J.)