IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 680 OF 2013

APPLICANTS : 1] Ramdeobaba Developers and Builders through its Partner Harikisan Vithaldasji Chandak, Aged about 52 years, Occu. Business, R/o. Arvi, Tah. Arvi, Dist. Wardha.

2] Ganesh Vithaldasji Chandak, Aged about 50 years, Occu. Business, R/o. Arvi, Tal. Arvi, Dist. Wardha.

3] Suresh Kanakmal Bothara, Aged about 50 years, Occu. Business, R/o. Arvi, Tal. Arvi, Dist. Wardha.

4] Dhiraj Champalal Chhallani, Aged about 39 years, Occu. Business, R/o. Manikwada, Tal. Ner, Dist. Yavatmal.

VERSUS

NON-APPLICANTS: Syed Mazaruddin Syed Shabuddin (Since dead, through his Lrs)

1] Kazi Syed Shabuddin Sayad Mazarhuddin, Aged about Major,

2] Akila Begum Wd/o Kazi Syed Mazarhuddin, Aged about Major,

3] Taslim Durdana Shafal Ahmed, Aged about Major,

4] Firdos Rukhsana Athar Moyuddin, Aged about Major,

All 1 to 4 R/o. Gawalipura, Darwaha taluka Darwaha, Dist. Yavatmal

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Mr. M. M. Agnihotri, Advocate for the applicants.
Mr. R. J. Mirza, Advocate for the non-applicants.

CORAM : G. A. SANAP, J.
Date of Reserving the Judgment : January 06, 2023.
Date of Pronouncement of Judgment : April 28, 2023.

JUDGMENT

1. In this criminal application, filed under Section 482 of the Code of Criminal Procedure, 1973, challenge is to the order dated 20.04.2013 passed by the Judicial Magistrate, First Class, Darwha, whereby learned Magistrate allowed the application (Exh.75) in Cri. Complaint Case No. 1272 of 2007, made by the complainants seeking amendment to the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the N.I. Act" for short).

2. The facts relevant for the decision of this application may be stated thus :

The applicants are the accused and the non-applicants are the complainants. They would be referred by their nomenclature in the complaint. The original complainant was Syed Mazaruddin. He died

on 19.08.2008 during pendency of the complaint. His heirs, the present complainant nos.1 to 4, are allowed to prosecute the complaint. The deceased complainant had agreed to sell his land to accused nos. 1 to 4. The accused issued a cheque bearing No.493369 dated 30.06.2006 for Rs.10,00,000/-, drawn on the account of the firm maintained with the Buldhana Urban Cooperative Bank Ltd., Branch Wardha. The deceased complainant presented the cheque for encashment through his bank namely Central Bank of India, Darwha. The bank informed the deceased complainant that the cheque was dishonoured on the ground that "the drawer had stopped the payment". The deceased complainant issued notice dated 30.08.2007 to the accused. It is stated that despite receipt of the notice, the accused did not pay the amount. Therefore, the deceased complainant filed the complaint.

3. Learned Magistrate took cognizance of the offence and issued process against the accused persons. The complaint was fixed for recording of the evidence. The complainants at that time made an application at Exh.75 for amendment. The proposed amendment was set out in paragraph 2 of the application. The sum and substance of the amendment application was that the relevant facts with regard to the

vicarious liability of accused nos. 1 to 4 remained to be pleaded due to oversight. It was also stated in the said application that accused nos.1 to 4 being the Partners of the firm, are responsible for the conduct of day-to-day business of the firm and as such they are vicariously liable.

4. This amendment application was opposed by the accused persons. According to them, the amendment application was not maintainable. The application was *mala fide*. There is no provision to entertain an application for amendment of a criminal complaint.

5. Learned Judicial Magistrate, First Class, by granting opportunity of hearing to the parties, was pleased to allow the application for amendment, holding that the amendment was of a formal nature. The application was maintainable. The proceeding under Section 138 of the N.I.Act is a *quasi* civil in nature. It was further held that the amendment would not cause any prejudice to the accused persons. Being aggrieved by this order, the accused have come before this Court under Section 482 of the Cr.P.C.

6. I have heard Mr. M. M. Agnihotri, learned advocate for the applicants/accused and Mr. Raheel J. Mirza, learned advocate for the non-applicants/complainants. Perused the record and proceedings.

7. Learned advocate for the accused submitted that by the proposed amendment the very core and crux of the complaint has been changed. Learned advocate pointed out that the amendment was not intended to remove any curable defect or infirmity in the complaint and as such the order granting amendment has caused severe prejudice to the accused persons. Learned advocate further submitted that before filing the complaint, notice was not issued to the partnership firm. Learned advocate submitted that therefore, there has been an inherent defect in the complaint. In order to substantiate his submissions, learned advocate placed reliance on the following decisions :

1] S. R. Sukumar .vs. S. Sunaad Raghuram, (2015) 9 SCC 609

2] Sanjay Gambhir .vs. State and another (2017 SCC Online Del 8331

3] N. Harihara Krishnan .vs. J. Thomas [(2018) 13 SCC 663

4] Pawan Kumar Goel .vs. State of U.P. and another in Criminal Appeal No. 1999/2022, decided on 17.11.2022.

8. Learned advocate for the complainants submitted that before filing the complaint, the notices were issued to the partners of the firm. Learned advocate submitted that the notice was replied, but the amount of cheque was not paid. Learned advocate submitted that the complaint was otherwise in accordance with law. Learned advocate submitted that while drafting the complaint, a specific statement of fact

that, accused nos.1 to 4 being the partners of the firm were responsible for the conduct of day-to-day business of the firm and as such vicariously liable for commission of the offence punishable under Section 138 of the N.I. Act, remained to be made. Learned advocate submitted that this was a curable infirmity and defect. Learned advocate submitted that the legal position has been well settled that an application can be made for amendment of a complaint to remove such curable infirmity or defect. Learned advocate further submitted that the facts stated in the complaint and in the reply by the accused, would show that no prejudice has been caused to them by granting the amendment. In order to substantiate his submissions, learned advocate has relied upon the following decisions :

1] *Rajendra Prasad Gupta .vs. Krakash Chandra Mishra and others,* reported at *(2011) 2 SCC 705*

2] *U. P. Pollution Control Board .vs. M/s Modi Distillery and others,* reported at *(1987) 3 SCC 684*

3] *Amol Shripal Sheth .vs. M/s Hari Om Trading Co. Ltd.* reported at *(2014) 6 Mh.L.J. 222*

9. In order to appreciate the rival submissions, I have gone through the record and proceedings and the judgments relied upon by the learned advocates for the parties. It is to be noted that the Code of Criminal Procedure has provided the procedure and machinery to deal

with the offenders for commission of substantive criminal offences. The intent and object of the legislature, in sum and substance, indicate that it is an Act to consolidate and amend the law relating to Criminal Procedure. The Cr.P.C. has provided a detailed procedural mechanism for conducting the criminal trial. It is further seen that no express provision for amendment of the pleadings has been made in the Cr.P.C. like C.P.C. It is further seen on perusal of the Cr.P.C. that no specific provision has been incorporated to create a bar to amend the criminal complaint. The moot question, therefore, is whether the application for amendment of criminal complaint can be made and allowed by the Court. If the answer to this question is in the affirmative, then the question is required to be considered and addressed keeping in mind the fact that the complaint is in respect of the dishonour of a cheque. The complainants in this case sought amendment to the complaint, which is the cheque bounce case under Section 138 of the N.I.Act. In order to address this question, it would be necessary to make a survey of the reported decisions of the Hon'ble Supreme Court and High Courts in various cases on this point.

10. The first decision is in the case of ***U.P. Pollution Control Board .vs. Modi Distilleries and others***, reported at ***(1987) 3 SCC 684***.

In this case, the amendment application was made for correction in the name of the company as Modi Distilleries instead of Modi Industries Limited. Hon'ble Apex Court recognizing the right to amend the complaint, held that a mere curable infirmity or defect can be rectified/corrected by making an application for amendment. It is held that, to this extent, the amendment in a complaint is permissible.

11. The next important decision is in the case of ***S.R. Sukumar .vs. S. Sunaad Raghuram (supra)***. The Hon'ble Supreme Court in this case has considered the decision in *U.P. Pollution Control Board* (supra). It is held by the Hon'ble Supreme Court that if the amendment sought to be made relates to simple infirmity, which is curable by means of formal amendment and by granting such an amendment, no prejudice is likely to 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. It is further held that if the amendment sought to be made in the complaint does not relate either to a curable infirmity which can be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow the amendment in the complaint. It is further pertinent to note that in this case, the Hon'ble

Supreme Court granted amendment despite making a note that the amendment sought to be made in the complaint was not of a formal in nature, but a substantial amendment. It is further seen on perusal of this judgment that in the case before the Hon'ble Supreme Court, the amendment application was made before taking cognizance and issuance of process.

12. Learned advocate for the complainants placed heavy reliance on the decision of the Coordinate Bench of this Court in the case of *Amol Shripal Sheth .vs. M/s Hari Om Trading Co. and others, (supra)* to substantiate his submission. In this case, the Coordinate Bench of this Court has held that the Magistrate has incidental and ancillary power to the main power of taking cognizance of offence to entertain and allow the amendment application and that, such power can be exercised before and after taking cognizance of the offence. The Coordinate Bench held that while entertaining and deciding the amendment application to the complaint, the Court has to bear in mind the fundamental principle of law that the Court takes cognizance of the offence and not of the offender. The Co-ordinate Bench was dealing with the case under Section 138 of the N.I. Act.

13. Learned advocate for the accused, relying upon the number of decisions of Hon'ble Supreme Court including the decisions in ***Aneeta Hada .vs. Godfather Travels and Tours Pvt. Ltd.***, reported at ***(2012) 5 SCC 661*** and *N. Harihara Krishnan .vs. J. Thomas (supra)*, submitted that the law laid down in *Amol Shripal Sheth (supra)* is not the correct law.

14. It would, therefore, be necessary to consider the decisions in the case of *Aneeta Hada* (supra) and *N. Harihara Krishnan* (supra). It would also be necessary to consider here the law laid down in *N. Harihara Krishnan's* case (supra). Paragraphs 26 and 27 of the report would be relevant. The same are extracted below :

> *26. The scheme of the prosecution in punishing under Section 138 of the Act is different from the scheme of the Cr.PC. Section 138 creates an offence and prescribes punishment. No procedure for the investigation of the offence is contemplated. The prosecution is initiated on the basis of a written complaint made by the payee of a cheque. Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such a cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of*

30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid. It is obvious from the scheme of Section 138 that each one of the ingredients flows from a document which evidences the existence of such an ingredient. The only other ingredient which is required to be proved to establish the commission of an offence under Section 138 is that inspite of the demand notice referred to above, the drawer of the cheque failed to make the payment within a period of 15 days from the date of the receipt of the demand. A fact which the complainant can only assert but not prove, the burden would essentially be on the drawer of the cheque to prove that he had in fact made the payment pursuant to the demand.

27. By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of THE ACT before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a Court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific.

> *Therefore, the Parliament declared under Section 138 that the provisions dealing with taking cognizance contained in the CrPC should give way to the procedure prescribed under Section 142. Hence the opening of non-obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.*

15. The Hon'ble Apex Court has held that the first ingredient for constituting offence under Section 138 of the N.I. Act is the fact that a person has drawn the cheque. Identity of the drawer of cheque is thus necessarily required to be known to the complainant (payee). It is held that therefore, in the context of prosecution under Section 138 of the N.I. Act, the concept of taking cognizance of the offence and not of the offender, is not applicable since disclosure of the name of the drawer is imperative i.e. offence under Section 138 of the N.I.Act is person specific.

16. It would be necessary at this stage to consider the law laid down in *Aneeta Hada's* case (supra). Paragraphs 58 and 59 of the report would be relevant. The same are extracted below :

> *"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely*

unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh](1970) 3 SCC 491)] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352)] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000)1 SCC 1] is overruled with the qualifier as stated in paragraph 51. The decision in Modi Distilleries [(1987) 3 SCC 684]has to be treated to be restricted to its own facts as has been explained by us hereinabove."

17. The decision in *Anneta Hada* (supra) has been considered by the Hon'ble Apex Court in the case of ***Himanshu .vs. B. Shivamurthy and another***, reported at ***(2019) 3 SCC 797***. Paragraphs 11, 12 and 13 of this report would be relevant. The same are extracted below :

> *"11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.*
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> *12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.*
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> *13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."*

18. All the above three decisions, namely *Aneeta Hada* (supra), *Himanshu* (supra) and *N. Harihar Krishnan* (supra) have been considered by the Hon'ble Apex Court in the case of *Pawan Kumar Goel* (supra). In this case, it is held by the Hon'ble Supreme Court that if the complainant fails to make specific averments against the company in the complaint for commission of an offence under Section 138 of

N.I. Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. It is held that since the provisions of Section 141 of the N.I. Act impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company or firm and therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) and sub-section (2) of Section 141 of the N.I. Act would not be liable to be convicted on the basis of the principles of vicarious liability.

19. The legal position is, therefore, well settled that the curable infirmity or defect can be removed by amending the complaint. The amendment cannot be allowed to change the basic core, crux and tenor of the complaint. The amendment, which results in prejudice to the other side, cannot be allowed. In other words, the amendment sought for to the complaint, if does not cause prejudice to the other side, the same can be allowed. When the amendment application pertains to addition of company or firm as a principal offender, after taking cognizance of the offence mentioned in the complaint by the Magistrate, by applying the principle of law that the Criminal Court takes the cognizance of the offence and not of the offender, cannot be

made applicable and company or firm cannot be added. If the cheque is drawn on the account of company or firm, then the principal offender is the company or firm and therefore, in the absence of the company or firm being arraigned as accused in the complaint, the prosecution against the Directors or Partners cannot be maintained. It, therefore, goes without saying that if the company or firm is not a party to the complaint and the application is made to add the company or firm as a party to remove such defect, the same cannot be entertained.

20. It needs to be stated that the Court can be called upon to address the question of grant of amendment in a different factual situation. In the fact situation where the company or firm is not a party and the prayer is not made to add the company or firm as a party, but the amendment may be sought to rectify other curable legal infirmity or defect. In this factual situation, the Court has to deal with and consider the application in the backdrop of the abovestated legal position. In such a case, the facts and circumstances in totality need to be considered to arrive at a conclusion as to the nature of amendment and the likely prejudice to the other side. In a case where company or firm is not a party, as a principal accused and application is made to add the company or firm as a party, such amendment cannot be allowed in view

of above legal position.

21. The Court may be required to consider the amendment application in a case where company or firm is a party as a principal accused, but one of the directors or partners is not made an accused. In such a case, the Court has to address the primary question as to whether the amendment sought for to add the director or partner is at all necessary and such addition is intended to cure legal infirmity or defect. The Court would also be required to consider the likely prejudice to the other side. This situation will also be required to be addressed in the totality of the facts and circumstances of the case. If the Court finds that all the basic requirements with regard to issuance of notice to the company and directors or firm and partners were fulfilled, then the Court has to consider the prayer for such an amendment keeping in mind the above legal position. It has to be mentioned that the question whether the amendment is formal and intended to curable defect or infirmity depends upon the facts and circumstances of each case and has to be addressed accordingly.

22. The order passed by the learned Judicial Magistrate First Class, Darwha needs to be examined keeping the above stated settled

legal position in mind. Similarly, the nature of the amendment sought for as well as the facts of the case needs to be appreciated. Accused no.1 is the partnership firm. The remaining accused are the partners of the said firm. The cheque in question was issued on behalf of the firm by the Partner accused Nos.2 and 4. The partnership firm and all the Partners of the firm have been arrayed as accused. The notice before filing the complaint was issued to all the Partners of the firm. The Partners of the firm replied the said notice. The Partners have stated that stop payment instructions were given to the bank in respect of the cheque in question because after execution of the sale-deed of the property, the sister of the deceased complainant had claimed the exclusive ownership over the property. It created the doubt in the minds of the Partners, namely the accused about the title of the original complainant to the property. In the reply, they informed the original complainant that he should get his title cleared and then take steps for encashment of the cheque. The accused have not denied issuance of cheque Rs.10,00,000/-. The accused have stated that they have no difficulty to honour the cheque provided the issue of the title claimed by the sister of the original complainant is resolved at the earliest.

23. The deceased complainant despite the above stand taken by the accused, filed the complaint and proceeded with the complaint against the accused. According to the complainants, at the time of drafting the affidavit of examination-in-chief, the advocate realised that the necessary averments to fasten the vicarious liability on the accused being Partners of the firm due to oversight and inadvertence remained to be pleaded in the complaint. The complainants, therefore, applied for the amendment of the complaint.

24. The accused opposed the said application *inter alia* contending that the application was not maintainable. The learned Magistrate, keeping the above stated undisputed facts in mind, found that the amendment sought for was intended to remove the curable infirmity or defect in the pleading and therefore, he was inclined to allow the application. The learned Magistrate further observed that in the teeth of the above stated undisputed facts, there would be no prejudice to the accused by granting the amendment.

25. In this case, admittedly, the partnership firm is the accused no.1. It, therefore, goes without saying that the partnership firm, being the principal accused in this case, has been joined in the array of the

parties. The Partners have also been arrayed as accused. The notice of demand was issued to all the Partners. The same was replied by the Partners. The only legal glitch that can be noticed in this case is non-issuance of notice in the name of the partnership firm before filing the complaint. In my view, if it is found that the amendment sought for is intended to remove the curable infirmity or defect, then the issue of non-issuance of notice to the firm before filing the complaint can be taken care of, while deciding the complaint on merits. However, in the facts and circumstances, on this sole ground, the amendment sought for cannot be rejected.

26. The question whether the amendment sought for is intended to remove the curable legal infirmity or defect needs to be considered in the backdrop of above legal position as well as the undisputed facts. Perusal of the complaint would show that a statement of fact has been made in the complaint that the Partners and the firm are liable to pay the amount of the cheque. They have failed to pay the same on receipt of the notice. It is stated that the accused have committed an offence punishable under Section 138 of the N.I. Act. The proposed amendment, therefore, needs to be examined in juxtaposition with the above undisputed facts and the settled legal

position. By way of the proposed amendment, it is sought to be contended that the accused Nos.1 to 4 are the Partners of Ramdeobaba Developers and Builders. They have purchased the land from the complainants and converted the same for NA purpose. It is stated that as such the Partners are jointly and severally liable for prosecution under Section 138 of the N.I. Act.

27. In my view, if this proposed amendment is examined in the backdrop of the above stated facts and legal position, the same is nothing but an elaboration of the basic material facts stated in the complaint. The perusal of the proposed amendment would show that it is intended to elaborate the relevant facts to correct this curable defect or infirmity. It is a formal amendment. All the Partners with the firm are arrayed as accused. Therefore, there was no major illegality as to the joinder of the accused. The necessary material facts for taking cognizance of the offence against the firm and Partners have been set out in the complaint. It is to be noted that, if the firm had not been joined as a principal accused and a prayer was made, then it would have been untenable in law. In my view, therefore, it has to be held in this case the amendment of the complaint was intended to remove this curable legal infirmity and defect.

28. The next important aspect that needs to be examined is with regard to the prejudice to the accused by granting the amendment. In the case of ***S.R. Sukumar*** (supra), the Hon'ble Apex Court has considered the decision in the case of ***U.P. Pollution Control Board*** (supra) and held that if the amendment sought to be made relates to simple infirmity, which is curable by means of formal amendment and by granting such an amendment, no prejudice is likely to 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. The issue of prejudice sought to be advanced on behalf of the accused needs to be addressed in the above background. The accused have not denied their liability to pay the amount. They have admitted issuance of the cheque. They have also admitted that some of the Partners have signed the cheque on behalf of the firm. All the basic ingredients of Section 138 of the N.I. Act to constitute the offence have not been seriously disputed by them. The stand of the accused, as can be seen from the reply, is that the sister of the deceased complainant had claimed exclusive ownership of the landed property transferred to the accused and therefore, the accused were taken aback. The accused, therefore, in order to protect their right

informed the deceased complainant that he should first address this stalemate and make the position clear. It is their case that, therefore, they informed the bank in writing to stop the payment of the cheque.

29. In view of this factual position, I am of the view that the proposed amendment is nothing but an elaboration of the material facts stated in the complaint. By the proposed amendment, the complainants have stated that the Partners, being responsible for the conduct of day-to-day affairs and business of the firm, are liable for the prosecution. It is further pertinent to note that even in the absence of this averment in the complaint, the complaint can be prosecuted and taken to the logical end as against the Partners, who have signed the cheques. This fact has not at all been disputed by the accused. Therefore, in my view, the proposed amendment is nothing but an elaboration of the material facts stated in the complaint. Since the proposed amendment was intended to elaborate this material facts, it could not be said to be prejudicial to the accused. In the backdrop of the undisputed facts and the nature of the existing pleadings in the complaint, according to me, the proposed amendment by no stretch of imagination could be said to be an attempt to remove any incurable legal defect.

30. In the facts and circumstances, I am of the view that the learned Magistrate was right in granting the application. I do not see any substance in the application. The application, therefore, deserves to be dismissed. Accordingly, the application is **dismissed.**

(G. A. SANAP, J.)

Vijay