
(2017) 04 KL CK 0011
In the High Court Of Kerala
Case No : 6859 of 2015

HAFSA RAHMAN T.

APPELLANT

Vs

STATE OF KERALA & ORS.

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 125](#) - Saving of inherent powers of High Court — Order for maintenance of wives, children and parents
[Negotiable Instr](#)

Citation : (2017) 04 KL CK 0011

Hon'ble Judges : Alexander Thomas

Bench : SINGLE BENCH

Advocate : L.RAJESH NARAYAN, SAIGI JACOB PALATTY

Judgement

1. The petitioner herein is the complainant in C.C.No.632/2010 on the file of the Judicial First Class Magistrate Court-II, Palakkad, alleging offence punishable under Sec.138 of the Negotiable Instruments Act, against the respondents 2 to 5 herein (accused Nos. 1 to 4 therein). As per the averments in Anx.A-1 complaint, R-2 herein is a company running the business of kuries and R-3 herein is the Managing Director and R-4 and R-5 are the Directors of the company. According to the petitioner, it is averred in the complaint that the petitioner is a subscriber to the kuri and towards settlement cheque dated 29.5.2010 for an amount of Rs.94,291/- drawn from the account of the 2nd respondent company and payable in favour of the complainant was presented for encashment, which resulted in dishonor of the cheque on the ground of insufficiency of funds. Thereafter, the complainant had complied with the requisite statutory formalities for the initiation of the complaint and had taken steps for instituting the above complaint as per Anx.A-1, which was taken on file as C.C.No.632/2010 on the file of the Judicial First Class Magistrate Court-II, Palakkad.

2. In para 2 of Anx.A-1 complaint, it is averred that towards settlement amount of kuri deposited by the complainant, the accused has issued cheque bearing

No.007554 dated 29.5.2010 for a sum of Rs.94,291/- drawn from the HDFC Bank Ltd, Palakkad Branch, payable in favour of the complainant for settlement amount of kuri deposited with the accused. But it is to be noted that in the said paragraph No.2 it is not averred with clarity as to which among the accused issued and signed the cheque in question. However, in para 6 of Anx.A-1 complaint, it is stated that "..... the cheque was issued by the 2nd accused in the presence and at the instance and direction of the other accused.....".

Accused No.2 (R-3 herein) happens to be one Sri.P.V.Sudhakaran, who is stated to be the Managing Director of the accused No.1 company. The cheque in question was also produced along with the complaint as can be seen from the last page of Anx.A-1 complaint. A copy of the said cheque has been made available in this proceedings as Anx.A-6 and a perusal of the said cheque shows that the cheque is issued for and on behalf of accused No.1 company [Sree Lakshmi Kuries and Loans (P) Ltd.], and the signatory of the cheque as can be seen from the seal appended thereto is one Sri.V.Radhakrishnan, Director of the said company. Accused No.4 (R-5 herein) is one P.V.Radhakrishnan, who is stated to be the Director of the company. It also happened that the petitioner-complainant had tendered proof affidavit in lieu of his chief examination as PW-1 and the said averments in para 6 of the complaint were reproduced in the said chief affidavit and thus it was stated therein also that the cheque in question was issued by accused No.2. According to the petitioner it was only much later that he had realized that the averments in para 6 of Anx.A-1 complaint that the cheque was issued by accused No.2 was a typographical clerical error as actually the cheque produced along with the complaint itself would show that the signatory of the said cheque was one Sri.V.Radhakrishnan, Director of the accused No.1 company and on realising the said clerical mistake, he had made Anx.A-2 application for correction of averments in para 6 of Anx.A-1 complaint as well as corresponding averments in the proof affidavit. The said plea for amendment was made as per CrI.M.P.No.7884/2013 in C.C.No.632/2010, which was considered by the trial court and was rejected as per Anx.A-4 order dated 13.11.2013. The trial court has mainly found that there are no provisions in the Cr.P.C to amend the complaint and chief affidavit those are filed before the court and that the application is not maintainable. The trial court has also held that it has been held by this Court in the judgment in Linda John Abraham v. Business India Group Company & ors. reported in 2010 (4) KLT 706 that the amendment request can be considered only before recording of the plea of the accused and after that stage plea for amendment cannot be allowed, etc. Aggrieved by Anx.A-4 order, the petitioner has preferred revision petition before the Sessions Court, Palakkad. The Sessions Court as per the impugned Anx.A-5 order rendered on 3.9.2015 has also rejected the said plea of the petitioner. The Sessions Court mainly placed reliance on the decision reported in Linda John Abraham v. Business India Group Company & ors. reported in 2011 (4) KHC 587 wherein it was held that the amendment which causes serious prejudice to the

accused cannot be allowed. However, as regards the plea for correcting the mistake in the averments in the proof affidavit, Sessions Court held that such a plea for amending the proof affidavit, which is nothing but the chief examination of the complainant cannot be considered but that the complainant should be permitted to adduce further evidence to speak out his case as how the mistake occurred and it is for the learned Magistrate to decide the question of admissibility of such evidence and dispose of the case in accordance with law and these orders at Anxs.A-4 and A-5 are under challenge in this CrI.M.C. The petitioner has sought to set aside the impugned orders and for orders from this Court to direct the trial court to allow the said plea for correction/amendment.

3. Though notice on this petition has been duly taken out on respondents 2 to 5, said notices were returned with endorsement "refused" and therefore notice to those parties are only to be treated as duly completed. However, there is no appearance for those parties.

4. Heard Sri.L.Rajesh Narayan Iyer, learned counsel appearing for the revision petitioner and Sri.Saigi Jacob palatty, learned Prosecutor appearing for R-1 State.

5. One of the pleas made by the petitioner is for correction/amendment of the averments in the proof affidavit. The proof affidavit submitted by the complainant is nothing but the evidence given at the time of chief examination. But there is no question of permitting correction of the evidence given by a party even if the evidence is rendered on the basis of proof affidavit. However, as rightly pointed out by the Sessions Court, the complainant could be permitted to adduce further evidence to explain as to how the said mistake has occurred in the averments in the affidavit filed in lieu of examination and it is for the trial court to decide the question of admissibility of such evidence and dispose of the case in accordance with law. These findings of the appellate court in para 14 of the order dated 3.9.2015 has not been challenged even by respondents 2 to 5. The said findings of the Sessions Court are not vitiated in any manner and are thus confirmed by this Court.

6. The main point to be decided in this case is as to the tenability of the plea made by the petitioner for correction/amendment of the averments in para 6 of Anx.A-1 complaint. According to the complainant, the averments therein is to the effect that the cheque in question was issued by accused No.2, etc. The cheque in question has also been produced along with the complaint as can be seen from serial No.1 of list of documents given on the last page of Anx.A-1 complaint. A copy of the said cheque has also been produced in this CrI.M.C as Anx.A-6 which shows that the signatory of the cheque has appended his signature along with seal of the company as its Director, as follows: "for Sreelakshmi Kuris and Loan (P) Ltd

V.Radhakrishnan

Sd/-

Director"

It is pointed out by the petitioner that the signatory of dishonoured Anx.A-6 cheque is one Sri.V.Radhakrishnan, Director of the company, who is none other than Accused No.4. Incidentally, it is also pointed out that though accused No.4 (R-5 herein) is one Sri.P.V.Radhakrishnan, the said party has only subscribed his name as V.Radhakrishnan, presumably after excluding the initial "P" which is reflecting the family surname. That the said averments in para 6 of Anx.A-1 complaint was made inadvertently while drafting the complaint and the fact that it is nothing but a plain clerical or typographical mistake is also evident from the fact that the cheque produced along with the complaint will show that the signatory is not accused No.2 (P.V.Sudhakaran) but Sri.V.Radhakrishnan (who is accused No.4). The said mistake was carried out while drafting and submitting proof affidavit of the complainant and that immediately on realising the said mistake the petitioner filed application for correction/amendment as borne out by Anx.A-2. So the only issue to be posed before this Court is as to whether the said mistake is a clerical or typographical mistake as contended by the petitioner and whether such a mistake could be corrected or amended in spite of absence of explicit provisions in that regard in the Cr.P.C. It is not in dispute that there are no explicit provisions nowhere in the Cr.P.C envisaging submission of application for amendment/correction of such a mistake. This Court in the judgment in *Madhavi v. Thupran* reported in 1987 (1) KLT 488 = 1987 KHC 150 has dealt with a similar issue and has held that "even though inherent power saved under Sec.482 of the Cr. P.C. is only in favour of High Courts, the subordinate criminal courts are also not powerless in cases like this to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision provided there is no prohibition and no illegality or miscarriage of justice is involved and under such circumstances in order to do what is absolutely necessary in the ends of justice or prevent prejudice or miscarriage of justice what is not prohibited could be taken as permitted because the Code of Criminal Procedure cannot be taken to have contemplated and provided for every contingency by making exhaustive provisions to meet the situations. All the criminal courts are having such an auxiliary power subject to restrictions which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else and correcting a mistake in the name of a party for the purpose of doing justice is within the competence of any criminal court." In that case, the 1st petitioner therein had filed maintenance case under Sec.125 of the Cr.P.C praying for grant of maintenance by her husband to be given to her and her minor children. It was averred that by a clerical mistake her name was written in the petition as Malathi instead of Madhavi. The respondent admitted marriage as well as paternity though he raised a contention that his wife's name is Madhavi and he did not marry a lady by name Malathi. It was this mistake that was sought to be corrected in the petition. It will be profitable to refer to paras 6 & 7 of the above said decision which read as follows: "6. In this case we are not concerned with the question whether a criminal court has the power to allow

amendment of pleadings. What was involved was only a correction of a clerical mistake to do justice to the parties. To say that even after being convinced of the genuineness of the mistake the court is powerless to grant relief cannot be accepted. When parties had no dispute that first petitioner is Madhavi, the wife of the respondent and mother of the minors, how can the court refuse relief on the technical ground that a wrong name is given in the petition. Courts are existing for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under S.482 of the Cr. P.C. is only in favour of High Courts, the subordinate criminal courts are also not powerless in cases like this to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision provided there is no prohibition and no illegality or miscarriage of justice is involved. Under such circumstances in order to do what is absolutely necessary in the ends of justice or prevent prejudice or miscarriage of justice what is not prohibited could be taken as permitted because the Code of Criminal Procedure cannot be taken to have contemplated and provided for every contingency by making exhaustive provisions to meet the situations. All the criminal courts are having such an auxiliary power subject to restrictions which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else. 7. Correcting a mistake in the name for the purpose of doing justice is within the competence of any criminal court. Even in criminal cases during investigation, enquiry or trial we find wrong names being deleted and correct names included or substituted and mistakes corrected. That is something necessary in the ends of justice to avoid a wrong person being prosecuted or punished or to enable an offender being brought to justice. What is prohibited under S.362 of the Code itself is only altering or reviewing judgment or final order disposing of a case after it is signed. Even in such cases correction of a clerical or arithmetical error is permitted. Even a charge could be amended in appropriate cases. If so nothing prevents a clerical or arithmetical error in an FIR or a police charge or some other paper being corrected in the ends of justice. For the same reason nothing prevents a mistake in the pleadings in a proceeding under S.125 of the Code being corrected in order to justice to the parties."

In the judgment in U.P Pollution Control Board v. Messrs Modi Distillery & ors. reported in (1987) 3 SCC 684 = (1987) SCC (Cri) 632, the Apex Court dealt with a case where the name of the company was wrongly mentioned in the complaint. That is instead of Messrs Modi Industries Limited, the name of the company was mentioned as Messrs Modi Distillery and the name was sought to be amended. Considering such a plea for correction/amendment regarding the name of the company, it was held by the Apex Court in para 6 of the U.P Pollution Control Board's case (see SCC report pages 689-690 para 6) as follows: "6. On a combined reading of the provisions contained in sub-sections (1) and (2), we have no doubt whatever that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Modi Industries Limited, the company owning the industrial unit Modi Distillery could be prosecuted as having been in

charge of and responsible to the company, for the business of the industrial unit Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged. The learned Single Judge has failed to bear in mind that this situation has been brought about by the industrial unit viz. Modi Distillery of Modi Industries Limited because in spite of more than one notice being issued by the Board, the unit of Modi Distillery deliberately failed to furnish the information called for regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company. Having wilfully failed to furnish the requisite information to the Board, it is now not open to the Chairman, Vice- Chairman, Managing Director and other members of the Board of Directors to seek the court's assistance to derive advantage from the lapse committed by their own industrial unit. 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 concerned accused 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. Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-section (1) or (2) of Section 47 of the Act unless there was a prosecution against Modi Industries Limited, the company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in para 2 has to be construed in the light of the averments contained in paras 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company."

7. This Court in the case *Linda John Abraham v. Business India Group Company & ors* . reported in 2011(4) KLT 787 = 2011 (4) KHC 587 has also dealt with the permissible parameters in such aspects in criminal proceedings. The said case pertained to a complaint alleging offence under Sec.138 of the Negotiable Instruments Act, wherein the drawer of the cheque was the company. The company (A-1) as well as its Chairman, (A-2), Managing Director (A-3) and

another Director (A-4) were arrayed as the 4 accused therein. The cheques were signed by the Chairman (A-2) and Managing Director (A-3) of the company. As far as accused No.4, it was not specifically stated in the complaint that at the time the offence was committed he was in charge of and responsible for the affairs of the company as envisaged under Sec.141 of the N.I.Act. Later on, the complainant submitted an application for amendment introducing a new plea that accused 2 to 4 were persons in charge of and responsible for the conduct of the business of the company. The application for amendment was dismissed by the trial court which was challenged before this Court. This Court also dismissed the said plea stating that where there is no averment in the complaint that accused No.4 was in charge of and responsible to the company for the conduct of its business, petition for amendment incorporating averments that he was responsible for conduct of its business cannot be permitted as it would cause serious prejudice to such accused, against whom necessary averments were not raised in the original complaint. This Court held that the said new plea cannot be treated as correction of a clerical mistake. It was held that in the absence of specific plea against accused No.4 that he was in charge of and responsible for the affairs of the conduct of the business of the company, he could have got a clean acquittal merely due to the absence of such necessary pleadings. Therefore, such pleadings so as to include the name of accused No.4 for the first time and that too by subsequently incorporating such averments alleging his role would amount to serious prejudice to such an accused and that such a plea for amendment which imposes serious prejudice to accused at such a subsequent stage cannot be permitted by the criminal court.

8. The Apex Court has also recently considered the scope for amendment of averments in a criminal complaint in the judgment in *S.R.Sukumar v. S.Sunaad Raghuram* reported in (2015) 9 SCC 609. Their Lordships in para 16 of Sukumar's case (supra), have categorically held that there are no specific provisions in the Cr.P.C to amend either a complaint or a petition filed under the Cr.P.C. The Apex Court held in para 19 of the Sukumar's case (supra), after placing reliance on the decision of *U.P.Pollution Control Board's case* (supra) Cr.P.C, that an easily curable legal infirmity could be cured by means of a formal application for amendment and 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. It was also held that 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. In the facts of that case the Apex Court found that the amendment application was to carry out amendment by adding certain paragraphs and it was also noted that the proposed amendment was not merely a formal amendment

but a substantial one and in spite of this, the learned Magistrate had allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Their Lordships in para 20 of the Sukumar's case (supra) have held that since the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter and since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused and that the amendment did not change the original nature of the complaint being one for defamation, etc. Accordingly, the Apex Court declined to interfere with the order passed by the learned Magistrate. Therefore, it is seen that even that where the amendment sought is a substantial one, such an amendment could be allowed by the trial court so long as it is before the taking of the cognizance and before the issuance of the summons to the accused, etc. But a reading of the said judgment in Sukumar's case (supra) would make it clear like the day light that though the amendment proposed is not a formal amendment, but a substantial one, the Magistrate can allow the amendment application on the ground that no cognizance was taken of the complaint before the disposal of the amendment application, in the absence of explicit provisions in that regard in the Cr.P.C. It will be profitable to refer to paras 18 to 20 of the decision in S.R.Sukumar v. S.Sunaad Raghuram reported in (2015) 9 SCC 609 pp. 620 & 621, which read 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." 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." Therefore, going by the legal principles laid down by the Apex Court, more particularly in the decision reported in U.P. Pollution Control Board's case (supra) reported in (1987) 3 SCC 684 para 6 and S.R.Sukumar's case reported in (2015) 9 SCC 609 para 18 & 19, it can be seen that where the application for amendment is a formal one which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, then such a plea could be allowed notwithstanding the absence of explicit enabling provisions in that regard in the Cr.P.C. In the instant case, it is true that the petitioner has averred in para 6 of Anx.A-1 complaint that the cheque in question was issued by A-2. But it can also be seen from Anx.A-6 cheque produced along with Anx.A-1 complaint itself, that the cheque has been issued and signed by one Sri.V.Radhakrishnan, and not by A-2, Sri.P.V.Sudhakaran. Therefore obviously there was no mischievous intention on the part of the complainant in making the said averment and he had nothing to gain by making such a wrong averment. It was only much later, that the petitioner has come to know about the said mistake. This Court has no hesitation to hold that such a mistake would only be described as a typographical or clerical mistake which was mechanically carried forward even in the proof affidavit filed in lieu of chief examination.

9. The facts dealt with by this Court in Linda John Abraham's case (supra) are quite distinct and different from the one dealt with in the present case. In that case accused No.1 was the company and its Chairman (A-2), Managing Director (A-3) and Director (A-4) were arrayed as accused Nos.2, 3 & 4 respectively. The cheque in question was issued and signed by the Chairman (A-2) and the Managing Director (A-3) of the Company. There was no averment in the original complaint that accused No.4 was in charge of and responsible for the affairs of the conduct of the company. It was much later, an application for amendment was filed before the criminal court for introducing an amendment in the averments of the complaint that accused No.4 was in charge of and responsible for the affairs of the company. It has been clearly held by the Apex Court in various rulings as in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & anr. reported in (2005) 8 SCC 89 that for maintaining allegations of culpability against accused-Directors of a company in complaints filed under Sec.138 of the N.I.Act r/w Sec.141 of the N.I.Act, there should be clear and necessary averments in the complaint that such co-accused Director was in charge of and responsible for the affairs of the business of the company as envisaged in Sec.141 of the N.I.Act. However, it was also held therein that such averments are not necessary in the case of Managing Director and Joint Managing Director of the company as well as signatories of the dishonoured cheque in question because they would be liable by virtue of the very position that they hold. Therefore, in the case of Directors and other Officials of the company other than Managing Director/Joint Managing Director/authorised signatory of the cheque, there should be necessary averments as stated above in the absence of which the complaint should not be proceeded against such Directors/Officials of the company. The cheques in question were issued and signed by accused Nos. 2 & 3 therein (Chairman and Managing Director of the company). Therefore, this Court clearly held that introducing such a new plea against accused No.4 therein would amount to causing serious prejudice on such accused so as to mulcted with vicarious liability as envisaged under Sec.141 of the N.I.Act. Sec.141 of the N.I.Act reads as follows: "Sec.141.Offences by companies.--

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and 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 accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he has exercised all due diligence to prevent the commission of such offence. Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter. (2) Notwithstanding anything contained in

sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this Section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm." Therefore, this Court has clearly held in Linda John Abraham's case (supra) that permitting such an amendment which causes serious prejudice to such an accused is not within the competence of the criminal court. Whereas the facts in this case are entirely different. A reading of para 6 of the impugned complaint as well as Anx.A-6 dishonoured cheque, which has been produced along with the complaint itself, would show that the averments in para 6 of the complaint are typographical or clerical mistake. All that the petitioner seeks is for correcting the word "2nd accused" appearing in para 6 of the complaint as "4th accused". The petitioner does not even seek to incorporate a new plea that accused No.4 was in charge of and responsible for the affairs of the business of the company. This appears presumably because the Three Judge Bench judgment in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & anr. reported in (2005) 8 SCC 89 has clearly held in para 19(c) thereof that the signatory of a cheque which is dishonoured is clearly responsible for the incriminating act and will be covered under sub-sec(2) of Sec.141. Para 6 of Anx.A-1 complaint cannot be said to cause any serious prejudice on accused No.4 as the dishonoured cheque produced along with the complaint itself would make it clear like the day light about the clerical mistake. It is not as if the petitioner had developed entirely a new and different case from the one projected before the trial court at the time of submission of the complaint as can be seen from a mere reading of the dishonoured cheque, which has been produced along with the complaint.

10. The trial court has mentioned in para 7 of the impugned Anx.A-4 order that this Court has held in the case in Linda John Abraham v. Business India Group Company & ors. reported in 2010 (4) KLT 706 that the criminal court should permit amendment only if it is before recording of plea of the accused. It is to be noted at the outset that the case in Linda John Abraham v. Business India Group Company & ors. is not reported in 2010 (4) KLT 706 and the said judgment is reported in 2011(4) KLT 787. The judgment reported in 2010 (4) KLT 706 is a judgment of the Supreme Court in the case Pepsico India Holdings (P) Ltd. v. Food Inspector. Presumably, the trial court referred to Linda John Abraham v. Business India Group Company & ors. reported in 2011(4) KLT 787 = 2011(4) KHC 587. A reading of para 13 of Linda John Abraham's case (supra) reported in 2011(4) KLT 787 p.792 would make it clear that this Court had referred to the

judgment of the Bombay High Court in *Neeraj Cement Structures Pvt. Ltd. & anr. v. Bombay J.C.B Earth Movers & anr.* reported in 2009 (2) KLD 56 (Bom). This Court in para 13 of the *Linda John Abraham's* case reported in 2011 (4) KLT 787 p.792-793 has stated that it has been held in *Pepsico India Holdings (P) Ltd. v. Food Inspector* reported in 2010 (4) KLT 706 (SC) as follows: "There can be no doubt that an amendment of the nature sought by respondent No.1 herein cannot be permitted. The complainant had averred in his complaint that the cheques were drawn on a particular bank. The verification has also been recorded and process has been issued. Further, the plea of the accused has also been recorded. No amendment could have been allowed in the complaint at this stage. Besides, the change of the name, in my opinion, results in a substantial change in the complaint and, therefore, such an amendment cannot be allowed." But a reading of the Apex Court judgment in *Pepsico's* case (*supra*) reported in 2010 (4) KLT 706 (SC) would clearly show that the above quoted observations do not pertain to the said judgment of the Supreme Court. As a matter of fact the above quoted observations are that of a learned Single Judge of the Bombay High Court in para 4 of *Neeraj Cement Structures Pvt. Ltd. & anr. v. Bombay J.C.B Earth Movers & anr.* reported in 2009 (2) KLD 56 (Bom) [which has been mentioned in para 13 of *Linda John Abraham's* case reported in 2011(4) KLT 787]. The above said observations of a learned Single Judge of the Bombay High Court should be understood in the context of the facts and circumstances of that case. The amendments sought in the complaint therein was for changing the name of the bank in the complaint and such a change was held to be a substantial change in the complaint. It is in the context of this specific factual scenario that it was held by the Bombay High Court that such a substantial amendment cannot be permitted in a case where process had already been issued to the accused and the plea of the accused was also recorded. So the said Bombay High Court judgment cannot be construed as an authority for the proposition that invariably in all cases, amendment of a criminal complaint can be considered only prior to issue of process on the stage of recording the plea of the accused, etc. This Court in para 13 of *Linda John Abraham's* case reported in 2011(4) KLT 787 has clearly held that the facts of that case considered by this Court therein is not a case, where certain clerical mistakes inadvertently occurred or crept in, which are sought to be corrected by the amendment. Moreover, it has been categorically held by the Apex Court in para 18 & 19 of *S.R.Sukumar's* case reported in (2015) 9 SCC 609, pp.620-621 that a formal amendment for curing an infirmity, especially of the nature of clerical or typographical error could be allowed, so long as it does not cause any serious prejudice to the accused. Further a reading of para 20 of *S.R.Sukumar's* case (*supra*), would indicate even a substantial amendment could be considered, so long as it is before taking cognizance and so long as the original nature of the complaint does not change. In the instant case, the amendment is pertaining only for rectifying a clerical or typographical error, which does not cause any serious prejudice to the accused and it does not change the nature of the complaint.

11. However, as noted hereinabove, the plea made by the petitioner for correcting the averments in the proof affidavit cannot be permitted. The petitioner is given liberty as mentioned hereinabove to seek permission of the trial court to adduce further evidence in this regard to explain as to how the mistake had occurred and it is for the learned Magistrate to decide the question of admissibility of such evidence and dispose of the case in accordance with law.

12. In the light of the above aspects, the impugned orders of both the courts below to the extent it has refused the petitioner to correct/amend the mistake in para 6 of Anx.A-1 complaint will stand set aside. The trial court is directed to allow the correction/amendment of para 6 of Anx.A-1 complaint as noted hereinabove. However, it is made clear that R-4 herein (A-4) will be at liberty to lead necessary evidence to prove that he is actually not the signatory of Anx.A-6 cheque and that the said signatory is a different person, if he has any such plea. With these observations and directions, the Crl.M.C stands finally disposed of.