

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5678 OF 2018

ORDER

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to set aside the order dated 21.05.2018 in CrI.M.P.No.1395 of 2018 in M.C. No.20 of 2015 passed by the Judicial Magistrate of First Class, Yemmiganur, whereby the petitioner filed a petition under Rule 17 of Order VI read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') and Section 126(2) of the Code of Criminal Procedure, 1973 (for short 'CrPC') seeking permission to amend the counter filed by him in M.C. No.20 of 2015, was dismissed.

The petitioner filed the above miscellaneous petition under Rule 17 of Order VI read with 151 CPC and Section 126(2) Cr.P.C. seeking leave of the court to amend the counter filed in the M.C. alleging that the petitioner could not raise such plea in the enquiry and the petitioner realized that the amendment is necessary to prosecute the proceedings under Section 125 CrPC.

The respondents filed counter denying the material allegations interalia contending that no plea questioning legitimacy of the child was raised in the counter, but after dismissal of CrI.M.P.No.387 of 2018 filed by the petitioner, he approached the Court with the new plea questioning the legitimacy of the child and it is impermissible and prayed for dismissal of the petition.

The trial court, upon hearing argument of both the counsel, accepted the contention of the respondent herein and dismissed the petition. Questioning the order, the present petition is filed on the ground that liberty shall be given to the petitioner to raise all

pleas in the counter and the court can exercise power under Section 482 Cr.P.C. to grant leave to the petitioner to amend the counter when dispute is with regard to paternity of the children in the maintenance case is in dispute, but the trial court did not consider the request in proper perspective and committed error and prayed to set aside the order passed by the court.

The petition is filed under Rule 17 of Order VI read with Section 151 of CPC and Section 126(2) CrPC.

Rule 17 of Order VI CPC deals with amendment of pleadings. Pleadings include plaint and written statement.

Section 151 CPC saves inherent powers of Court. Therefore, Rule 17 of Order VI CPC and Section 151 CPC have no application to the proceedings under Section 125 Cr.P.C.

Coming to Section 126 CrPC which deals with the procedure to be followed by the Courts, while enquiry into the petitions under Section 125 Cr.P.C. According to Clause (2) of Section 126 CrPC, all evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases. This provision is irrelevant and not applicable to claim such relief of amendment of counter in maintenance case filed under Section 125 CrPC.

I am unable to understand whether the counsel appeared before the trial court is conscious about the procedure to be followed in the proceedings under Section 125 Cr.P.C. Filing of the petition under Rule 17 of Order VI CPC read with Section 151 CPC

and under Section 126(2) CrPC indicates the counsel for the petitioner does not know the procedure to be followed before the trial court. The reason assigned for filing the petition is to grant leave to amend the counter, after dismissal of earlier criminal miscellaneous petition filed for referring the child for DNA examination, he seeks leave of the court to amend the counter. Therefore, the cause shown by the petitioner is not sufficient to grant leave to amend the counter. The proceedings in M.C. were initiated in the year 2015, but no steps have been taken up till 2018, though earlier petition in CrI.M.P.N.387 of 2018 was dismissed on 30.04.2018. Therefore, the petitioner cannot be permitted at this stage to amend the counter raising such plea questioning the legitimacy of the child. Hence, I find no ground to sustain the contention of the petitioner to amend his counter. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the stage of admission itself.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.08.06.2018
BV