

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.785 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Md. Jaki Ahmed son of Md. Kalim Resident of Mir Tola, Ward No.5, Police Station Saharsa, District Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Nikhant Prween, Daughter of Md. Noor Alam
3. Maruja Jaki (Minor), Daughter of Nikahat Praveen
4. Manujja Jaki (Minor) Daughter of Nikhat Praveen
5. Mahi Jaki (Minor), So of Nikhat Praveen
All are presently Resident of Malgodam Road, Village and Post Simari Bakhtiyarpur, Police Station Bakhtiyarpur, District Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satish Kumar Singh
For the Respondent/s : Mr.Sri Vinod Shankar Modi

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 13-08-2019

Nobody appears on behalf of the petitioner on repeated calls, it appears that as the case is of the year, 2016, as such the same is being taken up and disposed of at the stage of admission itself.

2. This revision application has been directed against the order dated 30.6.20116 passed by the learned Principal Judge, Family Court, Saharsa in Misc. Case No.162 of 2009, whereby and whereunder the learned court below has been pleased to allow amendment petition dated 15.1.2011 at the cost of Rs.500/-

3. Facts giving rise to this Revision Application in short is that the Opposite Party No.2 has filed an application under



Section 125 Cr.P.C. against the petitioner (husband) for maintenance of Rs.9,000/- per month. It further appears that the maintenance case was dismissed vide order dated 26.3.2009 for want of prosecution as such the Misc. Case No.85 of 2006 was filed, in which one witness was examined and cross examined. It further appears that on notice the petitioner appears before the learned Family Court, filed a show cause denying the claim of the maintenance on the ground that he has already pronounced three *talaque* to the Opposite Party No.2 as such she is not entitled for maintenance. It further appears that on 15.1.2011 Opposite Party No.2 filed an application for making amendment in the plaint of the present case, however, he has not raised objection but again she filed another application dated 26.11.2015, which was allowed. It further appears that the petitioner has filed show cause to raise objection against the amendment application in the proceeding under Section 125 Cr.P.C., the learned court below has allowed the amendment application vide order dated 30.6.2016.

4. Being aggrieved by the same, the present application has been preferred by the petitioner on the ground firstly that the petitioner is not entitled for maintaining as she is a divorcee muslim lady. Further ground is that the proceeding under Section 125 Cr.P.C. is a criminal proceeding and there is no



provision for amendment in the proceeding under Section 125 Cr.P.C. and moreover the amendment sought for is not a typographical mistake and amendment is not permissible in the proceeding under Code of Criminal Procedure and as such the petitioner has filed this Revision Application for setting aside the order dated 30.6.2016 passed by the learned Family Court in Misc. Case no.162 of 2009.

5. So far grounds taken by the petitioner in the Revision Application is concerned no doubt in the proceeding under Section 125 Cr.P.C. there is no provision of amendment , however, it is well settled law that the proceeding under Section 125 Cr.P.C. is quasi criminal proceeding and quasi civil proceeding and furthermore in this case the amendment sought for by the Opposite Party No.2 is only addition of her three minor children in the Miscellaneous Case, which could not be mentioned in the petition due to typographical error, which was allowed by the learned Principal Judge and the same has been challenged by the petitioner by filing this Revision Application and the grounds taken is that there is no provision for amendment, however, as stated above the proceeding under Section 125 Cr.P.C. is quasi criminal and quasi civil proceeding and whatever amendment Opposite Party No.2 has sought for is only addition of his minor children in the petition



and that does not make any difference in the nature of the application.

6. Above question has been considered by the Hon'ble High Court of Madras in the judgment dated 3.2.2010 passed in Crl. R.C.No.780 of 2006 and M.P.No.1 of 2006 in para nos. 9, 10, 11, 12, 13 and 14, which are as follows :

9. It is true that to amend either a complaint or a petition filed under the provisions of the Code, there is no specific provision in the said Code. But, the courts have held that petitions seeking such amendment to correct the curable infirmities, can be allowed even in respect of complaints. In this regard, a reference may usefully be made to the following judgements.

10. In U.P. Pollution Control Board v. Messrs Modi Distillery and others, (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint (i.e.) instead of M/s.Modi Industries Limited, the name of the company was mentioned as M/s.Modi Distillery. In such a situation, the Hon'le Supreme Court held as follows:-

"The learned single Judge has focussed the 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 Messrs 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 paragraph 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 Messrs Modi Industries Limited, the company owning the industrial unit, in place of Messrs Modi Distillery."

".....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."

11. A close reading of the above judgement of the Hon'ble Supreme Court would make one to easily understand that the Hon'ble Supreme Court, in the given set of facts, was of the view that the legal infirmity therein was such a nature which could be easily cured by means of a formal application for amendment. The words "formal amendment" and "easily cured" are to be underscored. This makes it abundantly clear that if the infirmity is of such a nature which cannot be easily cured or if the amendment is not a formal one, it goes without saying that such amendment cannot be entertained.

12. Relying on the above judgement, while dealing with an identical situation, this Court in M/s.Egmore Benefit Society Limited v. K.Balasigamani, 1998 (II) CTC 372, has held that in the event of the defect being a curable one, such amendment of the complaint can be permitted. Very recently, a learned single Judge of this Court in K.K.Saravanakumar v. V.Saravanan, 2009 2 L.W. (CrL.) 1105, after having noticed the above judgement



of the Hon'ble Supreme Court, in para 9 of the judgement has held as follows:-

"It is well settled that the paramount consideration is the dispensation of justice and nothing should result in prejudice to the accused by condoning such mistakes made in the complaint. The Magistrate without any authority or power has allowed the complaint to make corrections in the complaint, after taking the complaint on cognizance. It is purely an illegality committed by the Magistrate.
"

13. A perusal of the judgements of the Hon'ble Supreme Court as well as this Court cited supra would make one thing clear (i.e.,) 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 would 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 amendment to be made. To 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.

14. When the Courts have taken such a consistent view that a formal amendment in respect of curable infirmity could be allowed even in a complaint, which is purely criminal, in my considered opinion, such amendment can certainly be allowed in a proceeding under Section 125 of the Code which is quasi civil. In view of the above I hold that the learned



Magistrate has power to entertain a petition for amendment.

7. Considering the above facts and circumstances, I find no merit in this application.

8. Accordingly, this Revision Application is dismissed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	13.8.2019
Uploading Date	17.08.2019
Transmission Date	17.08.2019

