

08.04.2021
Item No.9
Ct. No.42
CHC

C.R.R. No.3203 of 2019
(Physical Hearing)

In Re: An application under Section 401 read with Section 482 of the Criminal Procedure Code, 1973.

In the matter of:-

Tania Banerjee (nee Mukherjee)
.....petitioner

Mr. Ankit Agarwala,
Ms. Alotriya Mukherjee,
Mr. Vineet Ojha
... for the petitioner

Smt. Sreeparna Das
... for the State

The affidavit-of-service furnished by the petitioner be taken on record.

None appears for the opposite party no.2.

The State is represented by learned advocate namely, Smt. Sreeparna Das.

Petitioner/wife has assailed the order dated 17th August, 2019, passed by Learned Judicial Magistrate, Kalyani, Nadia, Case No.122 of 2014, under Section 125 Cr.P.C., rejecting the petitioner's application for amendment.

Mr. Agarwala, learned advocate representing the petitioner/wife submits that learned court below has illegally rejected the prayer for amendment without having understood the

true purport of this proposed amendment, which was sufficiently mentioned in the schedule of the amendment application. Without changing the nature and character of the pending maintenance application, the petitioner/wife has sought for introduction of three significant facts, which according to the petitioner are absolutely necessary for the proper adjudication of the matter in dispute between the parties.

The learned court below appears to have rejected the prayer for amendment on the ground that the petitioner had sufficient knowledge in respect of such facts, now proposed to be put in by way of amendment, and in spite of sufficient knowledge, the same could not be put in the relevant maintenance application under Section 125 Cr.P.C. Learned court below was of the further view that purpose of proposed amendment could be brought in by way of cross-examination, as such the necessity of subjecting the petition under Section 125 Cr.P.C. for an amendment was ruled out.

It is given to understand by the learned advocate for the petitioner that the affidavit-in-chief for the husband/opposite party no.2 has been filed in this case after the evidence of petitioner/wife. It is thus very clear that the learned court below is at the stage of collecting evidence of the parties.

Upon perusal of the schedule of the amendment, it appears that the proposed amendment will not change the nature and character of the pending maintenance case, and the facts sought to be incorporated in maintenance application are necessary for

proper adjudication of the dispute between the parties and also for quantification of amount of maintenance, if at all granted in this case.

The prayer for amendment, as such, is considered and allowed upon setting aside the order dated 17th August, 2019, passed by the Learned Judicial Magistrate, Kalyani, Nadia, in Misc.Case No.122 of 2014.

The amended copy of maintenance application be filed before the learned court below within 10 days from the date of communication of this order upon supplying a copy of the same to the opposite party no.2. The opposite party no.2 will be at liberty to file additional w/s, if there be any. Upon observing the formalities, as required to be observed under the provisions of the law, the learned court below shall proceed with the collection of evidence providing sufficient opportunity of hearing to either of the parties to this case.

With this direction/observation, the instant revisional application stands disposed of.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)