

CRR(F)-429-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-429-2024

Date of decision: 16.04.2024

GURDARSHAN SINGH

... PETITIONER

V/s

SUKHWINDER KAUR AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Mandeep Singh, Advocate for
Mr. L.S. Sidhu, Advocate for the petitioner.

SUMEET GOEL, J.

1. Challenge in the present criminal revision petition has been laid to the order dated 30.01.2024 passed by learned Principal Judge, Family Court, Moga, whereby certain amendments to the petition filed by the respondents, under Section 125 Cr.P.C. were permitted to be incorporated in the pleadings by the learned Family Court.

2. Facts shorn of unnecessary details, germane to the present lis between the parties, are that the respondents filed a petition dated 27.03.2019, under Section 125 Cr.P.C. before the learned Family Court, Moga for grant of maintenance against the petitioner. In the said petition it was inter-alia averred that the marriage between the petitioner and respondent No.1 took place on 15.12.1991. Two children i.e. Lovepreet Singh (son) and Simranjit Kaur- respondent No.2 (daughter) were born out of the wedlock of the petitioner and Respondent No.1. It is averred that since the petitioner neglected the respondents without any valid

cause, therefore, they are entitled to grant of maintenance under the provisions of Section 125 Cr.P.C.

3. The respondents later on, realizing that certain typographical and clerical errors have crept in at the time of drafting the petition under Section 125 Cr.P.C. filed an application dated 07.11.2023 before the learned Family Court seeking amendments in the petition under Section 125 Cr.P.C. The amendments are sought with following averments in the application:

“In the main petition petitioner want to make correction as under:-

- a) In the array of parties, the address of the respondent will be corrected as under:
Gurdarshan Singh son of Harcharan Singh resident of Village; Ghal Kalan Tehsil and District Moga.*
- b) The heading and prayer clause of the main petition will be as under:
Petition under Section 125 Cr.P.C. for grant of maintenance allowance at the rate of Rs.20,000/- per month for each of applicants totalling Rs.40,000/- per month from the date of application.*
- c) The date of marriage in para No.1 of the petition will be substituted as 15.12.1991 in place of 15.12.2991.*
- d) In para No.11, salary of the respondent will be substituted as Rs.75,000/- to Rs.85,000/- per month in place of Rs.60,000/- to Rs.70,000/- and in place of ‘son’, ‘daughter’ will be substituted and amount of Rs.20,000/- will be substituted in place of Rs.10,000/-.*
- e) In para No.15 of the petition amount of Rs.40,000/- will be substituted in place of Rs.30,000/- and amount of Rs.20,000/- will be substituted in place of Rs.15,000/-.”*

Somewhat similar amendments were sought to be made to the application filed for grant of ad-interim maintenance also.

4. The said amendments sought for on behalf of the respondents were opposed by the petitioner by filing reply to the application of the respondents. In the reply it was averred that the jurisdiction to allow the amendment is taken away unless the Court comes to conclusion that

inspite of the diligence, parties could not have raised the matter before commencement of trial. The aspect pertaining to due diligence does not exist in the application. The proposed amendments were well within the knowledge of the applicant at the time of filing of petition as such the applicant cannot be allowed to amend the pleadings to fill up lacunas. Since the proceedings in the trial have commenced and the evidence has also been led by the respondents, therefore, the amendments sought cannot be permitted at this stage. The amendments sought to be made are not typographical or clerical errors.

5. The learned Family Court while allowing the application filed by the respondents seeking amendments to the main petitioner and ad-interim application filed by the respondents, held that the case is still at the stage of completion of pleadings between the parties. It is held that petitioner being the respondent in the petition before Family Court, was proceeded against exparte on 02.08.2019 and the case proceeded for recording the exparte evidence of the respondents (herein). However, on 18.11.2022 the petitioner appeared before the learned Family Court and filed an application for setting aside the exparte proceedings against him. The said application was allowed and the petitioner was allowed to join the proceedings vide order dated 21.07.2023. Thereafter, the case before the learned Family Court is pending for completion of pleadings, as the petitioner has not yet filed his reply to the petition under Section 125 Cr.P.C. as well as application for grant of ad-interim maintenance. The learned Family Court held that the amendments sought will neither change the nature of the petition nor it will change the cause of action. It was further held that the amendments sought will not cause prejudice to any party as the petitioner is yet to file his replies in the matter. As such the learned Family Court allowed the application for amendments sought by the respondents vide impugned order dated 30.01.2024. It is

worthwhile to mention that while allowing the application for amendment, the learned Family Court placed reliance on judgment passed by Hon'ble Supreme Court of India in cases of Ganga Bai Vs Vijay Kumar & Ors (1974) 2 SCC 393; and Pankaja & Anr. Vs Yellappa (dead) by Lrs. & Ors (2004) 6 SCC 415.

6. I have heard the learned counsel for the petitioner and perused the record of the case carefully. The learned Counsel for the petitioner has argued that under the provisions of Section 125 Cr.P.C., the petitioner is entitled for maintenance from her husband till her marriage. It is argued that the learned Family Court has erred in not deciding the application of the respondent on merit, and the application filed by the petitioner, for dismissal of the application for correction, has wrongly been allowed. There is no specific provision for correction and amendment in the Family Courts Act as well as Criminal Procedure Code. The provisions of Order 6 Rule 17 of CPC does not apply for amendment of pleadings in the present case.

7. The argument advance on behalf of the petitioner that that under the provisions of Section 125 Cr.P.C. the petitioner is entitled for maintenance from her husband till her marriage is fallaciously made. The said argument necessarily requires adjudication on merits of the case which is not the subject matter of the present case before this Court. The raising of this argument on behalf of the petitioner, without even filing reply to the petitioner for grant of maintenance, before the family court is a clear abuse of the process of court by the petitioner and is not tenable in law.

8. The next argument on behalf of the petitioner that the learned Family Court has erred in not deciding the application of the respondent on merit, and that the application filed by the petitioner, for dismissal of the application for correction, has wrongly been allowed, and is again an

argument made without any substance or basis. As pointed out already the case before the family court being at a nascent stage of completion of pleading, wherein the petitioner after putting in appearance as respondent, has not yet filed his reply to the petition for grant of maintenance. At this stage, the learned Family court had no jurisdiction to decide the petition filed for grant of maintenance on merits, and has rightly confined itself to the aspect of deciding the amendment application seeking certain typographical and clerical errors in the amendment petition.

9. Coming to the argument advanced on behalf of the petitioner there is no specific provision for correction and amendment in the Family Courts Act as well as the Criminal Procedure Code. The provisions of Order 6 Rule 17 of CPC do not apply for amendment of pleadings in the present case. It is trite law, that provisions for grant of maintenance as contained in Section 125 and Chapter IX of Cr.P.C. are core criminal proceedings. Rather the same has all the characteristics of civil proceedings, being related to grant of maintenance only. It is further trite law that the procedure is a handmade and not the mistress of law, intended to subserve and facilitate the cause of justice rather than to govern or obstruct it. A Division Bench of this Hon'ble Court while dealing with the aspect of Chapter IX of the Criminal Procedure Code and the applicability of provisions of the Civil Procedure Code to the said chapter, in case of Smt. Kamla Devi and Ors. Versus Mehma Singh, 1989(1) RCR (Criminal) 476 has held as under:

“17. As observed by the Supreme Court in Nand Lal Misra's case (supra), proceedings under Chapter IX or the Code of Criminal Procedure are not of criminal nature but are primarily of a civil nature. Although technicalities of procedure as provided in different provisions of the Code of Civil Procedure may not ipso facto apply to the proceedings initiated under section 125 of the Code of Criminal Procedure, however, such of the provisions of the

Code of Civil Procedure which help in advancing the cause of justice can legitimately be adopted in the proceedings initiated under section 125 of the Code of Criminal Procedure.”

10. As such there is no fault in the findings returned by the learned Family Court, while permitting the respondent to carry out corrections/amendments in her petition for grant of maintenance, which are in the nature of clerical and typographical mistakes only. Resultantly, the present Criminal Revision Petition is dismissed in liminie being devoid of any merit.

(SUMEET GOEL)
JUDGE

April 16, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No