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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2273-2024 (O&M)
Date of decision: 18.11.2024

Ghanshyam Kumar Yadav

... Petitioner

Vs.

Lalti Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vivek Aggarwal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition is preferred seeking setting aside of the order dated 08.08.2024 passed by learned Additional Sessions Judge, Chandigarh, upholding the order dated 18.10.2022 passed by learned Additional Chief Judicial Magistrate, Chandigarh, vide which the application filed by the respondent seeking amendment of her petition under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] and to add the name of her son as a party, was allowed.

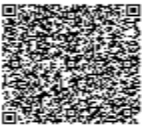
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2. Succinctly, the facts, as alleged, are that the marriage between the parties was solemnized on 21.11.2017 and out of this wedlock, one son was born on 21.10.2018. At the time of filing of the petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*), son could not be impleaded as a party, as the respondent was not in possession of his birth certificate. The respondent acquired the same from the office of Registrar, Births and Deaths and subsequently, moved an application to amend the title of her petition under Section 125 of Cr.P.C. (*now Section 144 of BNSS*), so as to include name of her son. The said application was allowed by learned trial Court vide order dated 18.10.2022. Aggrieved by the same, the petitioner moved a revision petition before learned Court below, which was dismissed vide impugned order dated 08.08.2024.

3. Learned counsel for the petitioner, *inter alia*, contends that learned Court below has erred in passing the impugned order dated 08.08.2024, as it has overlooked the reply filed by the petitioner as well as the reply to the application for interim maintenance. The petitioner, in his reply, had specifically taken an objection to para No.24, as their son was not impleaded in spite of being a necessary party. Since the child was not made a party at the inception, he cannot be impleaded now and the respondent cannot claim maintenance in his name.

4. Having heard learned counsel for the petitioner and after perusing



the record of the case with his able assistance, it appears that the amendment is merely formal in nature and does not impact the heart of the case. Moreover, no prejudice has been caused to the petitioner by allowing the amendment in the case title, as he can still raise all the pleas available to him. A two Judge Bench of the Hon’ble Supreme Court in ***S.R. Sukumar Vs. S. Sunaad Raghuram, (2015) 9 SCC 609***, speaking through Justice R. Banumathi, the following was held:

“17. Insofar as merits of the contention regarding allowing of amendment application, 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.

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*18. What is discernible from the **U.P. Pollution Control Board's case** is that 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.”*

5. Further, a two Judge Bench of the Hon’ble Supreme Court in



Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and another, 2016 AIR (Supreme Court) 2519, speaking through Justice A.K. Sikri, made the following observations:

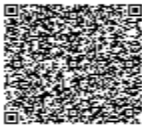
“18. What we are emphasising is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.”

6. The Courts are required to conduct the maintenance proceedings while being alive to the legislative intent behind the provision under Section 125 Cr.P.C. (*now Section 144 of BNSS*) in its true spirit, which is to provide speedy assistance and social justice to women, children and infirm parents. The provisions of Section 125 Cr.P.C. (*now Section 144 of BNSS*) were enacted as a measure to further social justice and protect dependent women, children and parents, which also falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. A three-Judge Bench of the Hon’ble Supreme Court in ***Vimala (K.) Vs. Veeraswamy (K.), (1991) 2 SCC 375***, speaking through Justice Fatima Beevi, opined that as follows:

“3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

7. In view of the discussion above, this Court is of the considered

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opinion that allowing their son to be impleaded as a party in the proceedings under Section 125 of Cr.P.C. (*now Section 144 of BNSS*) would not just serve a social purpose, but also avoid multiple proceedings on the same issue. Further, the proceedings are still at an initial stage and making a formal change in title of the petition would not have any adverse impact on any party involved.

8. Accordingly, the present petition is dismissed.
9. The pending miscellaneous application(s), if any, shall stand disposed of.

18.11.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No