HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRR No. 5717/2019

Sanjay Kumar Shrivastava

Vs.

Smt. Pratibha

[Single Bench : Hon'ble Justice Smt. Anjuli Palo, Judge]

Ms. Amrit Ruprah, learned counsel for the applicant.

ORDER
(10/12/2019)

This criminal revision under Section 397 read with Section 401 of Cr.P.C. has been filed by the applicant being aggrieved by the order dated 07.11.2019 passed by the Judicial Magistrate First Class, Rehli in MJC No. 60/2005 allowing the amendment application filed by the non-applicant/respondent under Order 6 Rule 17 of Code of Civil Procedure.

2. It is not in dispute that the applicant and the non-applicant/respondent are husband and wife. Their marriage was solemnised in the year 2003. In the proceedings under Section 13(B) of the Hindu Marriage Act, on their mutual consent, decree of divorce was granted vide order dated 06.04.2005. On the basis of the compromise arrived between them, Rs. 50,000/- as has been paid to the respondent/non-applicant as permanent alimony.

3. Learned Family Court found that permanent alimony has been received by the respondent, even then the proceeding under Section 125 of the Cr.P.C. is still pending against the applicant in which the respondent/non-applicant has filed an amendment application under Order 6 Rule 17 C.P.C. Applicant submits that while seeking various amendments, the respondent/non-applicant tried to substantially change her case. Vide order dated 07.11.2019, learned trial Court has wrongly allowed her amendment application in the proceedings under Section 125 of the Cr.P.C. The impugned order is patently illegal and without jurisdiction, hence, deserves to be set aside.

4. The applicant has challenged the impugned order on the ground that the Court has no jurisdiction to allow such amendment application. During the argument learned counsel for the applicant strongly contended that under the proceeding of Section 125 of Cr.P.C., the trial Court has no power to allow the amendment application under Order 6 Rule 7 of CPC.

5. In **S.R.Sukumar vs. S.Sunaad Raghuram, (2015) 9 SCC 609**, the Supreme Court has held that, ‘in so far as merits of the contention regarding allowing amendment application is concerned, it is true that there is no specific 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.' It has further observed as under :

> "19. What is discernible from **U.P.Pollution Control Board [(1987) 3 SCC 684]** case is that an 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 there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made."

6. The Calcutta High Court, in case of **Sri Shyamal Prosad Halder vs. Smt. Madhuri Haldar & Ors., 2005 (1) Crimes 246,** while upholding the order of revisional Court allowing the application for enhanced maintenance in favour of the wife and children, has placed reliance on the case of **Manoka Chatterjee vs. Swapan Chatterjee, 2002 C.Cr.LR (Cal) 577** wherein it was held as under :

> "That a mutual agreement in petitioner's proceeding under Section 13B of the HMA which spells out getting a lump sum amount perpetually binding herself not to claim any further maintenance allowance in the future and that she should withdraw all pending cases in the different Courts was not tenable in law. Section 125 is a piece of social welfare legislation its principal purpose to protect the wife from vagrancy and destitution. Even if the wife binds herself consciously or unconsciously to such an agreement, law has to come to her aid and protect her statutory right to maintenance and also her

right to life and live with dignity. Such a position protects not only her interests but also the larger social interests lature maintenance of a lump sum amount of money cannot be made frozen on time as it is flexible and changes from time to time according to changes of circumstances." (Emphasis supplied)

7. In case of **Bibhas Debnath vs. The State of West Bengal & Ors., 2015 Cr. L.J. 5021**., the High Court of Calcutta has made the following observations :

"However, a co-ordinate Branch of this Court in "Sri Joyanta Shit vs. Smt. Lakshmi Shit reported in 1996 C Cr. LR (Cal) 291 had held :

'….7. It has been laid down by Kerala High Court in the case of Madhavi vs. Thupran, (1987) 3 Crimes at page 183, that proceedings under Section 125, of the Code are not punitive. It is not a criminal proceeding at all. It serves a social purpose and only prescribes an alternative forum to get relief. Though the section appears in Criminal Procedure Code but it remains a proceeding of civil nature. Enquiries therein are only quasi criminal in nature. For all practical purposes the pleadings in a proceeding under Section 125, Cr.P.C. are like pleadings in a civil case and the pleadings can be amended in a appropriate circumstances...'

10. x x x

In this case (Abdul Latif Hazari vs. Kamasunessa Bibi in CRR No. 3584 of 2013) I find the decision of a co-ordinate bench of this High Court is well-reasoned and it was authoritatively held that in a proceeding under Section 125 Cr.P.C. amendment is permissible. I therefore, find no merit in this criminal revision and same is dismissed."

11. This Court is also bound by the view taken earlier by the aforesaid coordinate Benches of

> this Court. The ratio of the cases relied upon by the petitioner would not appear to be applicable in the given facts and circumstances since none of those cases arose out of any proceedings under Section 125 of the Cr.P.C., in relation to which provision alone the view regarding permissibility of amendment was taken by the earlier Benches. This Court finds no reason to deviate from the same."

8. In case of **Gurnam Singh vs. Paramjit Kaur in CR No. 4756/2011**, the High Court of Punjab and Haryana came to the conclusion that the wife would be at liberty to avail other remedies available to her for enhancement of maintenance in accordance with law under other Acts. It has further been observed that :

> "It would also be apposite to reproduce Section 25 of the 1956 Act which reads as under :
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> > '25. Amount of maintenance may be altered on change of circumstances – The amount of maintenance, whether fixed by a decree of court or by agreement either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alterations.'
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> This aforesaid section provides that amount of maintenance may be altered, it does not talk that a decree in a decided suit can be amended by way of mere application for enhancement. If the amount is fixed by an agreement or compromise, it can be altered by an agreement or a decree of appropriate Court in a suit instituted by a party of the agreement. If the amount of maintenance is fixed by a decree and the decree expressly provides for future modification or amendment of decree, in those circumstances, an application for alteration/enhancement of the maintenance can be made. If there is no such stipulation in the decree and any party

> seeks alteration on change of circumstances with decree to the amount of maintenance, he/she is required to file a separate suit and obtain another decree superseding the earlier one."

9. The proceedings are *quasi* civil in nature meaning thereby that it has ingredients of both civil and criminal. The proceedings under Section 125 of Cr.P.C is pending before the Court of Judicial Magistrate First Class, Rehli at the Tehsil place not in the Family Court working at Headquarter, Sagar. There is no specific bar that provision of Order 6 Rule 17 of CPC are not applicable in case of 125 of Cr.P.C.

10. The right to maintenance being a statutory right, a party cannot contract herself or himself out of the same. Thus, a wife cannot bind herself by agreement that her husband to forgo her right of applying to the court for maintenance in matrimonial proceedings between them. The jurisdiction of the court to award maintenance is not ousted, as such an onerous term is opposed to public policy. The principle will not, however, apply to an undertaking given by a party to the court not to ask for variation of an order for maintenance made by the court. The court is not precluded from adjudicating on the enforceability of such agreement between the spouses. The court would have jurisdiction to look into the circumstances under which such an agreement was reached and must arrive at a decision, given the totality of the facts.

11. Section 25(2) of the Hindu Marriage Act also confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance with regard to 'change in the circumstances of the parties'. The law recognizes the right of maintenance as continuing right and the quantum of maintenance may vary from time to time.

12. A co-ordinate Bench of this Court, in case of **Smt. Mayara (Priyanka) Matlani vs. Umesh @ Akshay, in Miscellaneous Petition No. 576 of 2017**, in a similar case, held that by way of amending the pleadings, if no prejudice is caused to the respondent, then the amendment application filed by the applicant can be allowed.

13. In case of **Subair K. vs. Asma & Ors., OP (FC) No. 70/2011 (R),** the High Court of Kerala at Ernakulam has considered the amendment application seeking enhancement of the maintenance from Rs. 4,000/- to 20,000/-. From the findings given by the High Court of Kerala, it shows that the provisions of Civil Procedure Code and of any other law for the time being in force shall apply to the suits and proceedings before a Family Court and for the purpose of said provisions of the Code, a Family Court shall be deemed to be a civil Court.

14. In case of **Subair (supra)**, the High Court of Kerala has

made the following observations :

> “13. A Constitution Bench of the Supreme Court, in the decision reported in **Narayan Row v. Ishwarlal (AIR 1965 SC 1818)** defined the two expressions, 'civil proceedings' and criminal proceedings', as follows :
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> > ".....The expression 'civil proceeding' is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed...."
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> The provisions of Chapter IX of the Cr.P.C. are provisions specifically incorporated into the Code with the aim of preventing vagrancy. Going by the observations of the Supreme Court, it has to be held that a proceeding under Section 125 Cr.P.C. is a criminal proceeding, even though it may not be a proceeding initiated with respect to an offence and with a view to get the respondent punished for an offence. Keeping in view of the above decision and the provisions of the Act already mentioned, a Full Bench of this Court, in the decision reported in **Satyabhama v. Ramachandran [1997(2) KLT 503 (FB)]** held that the Family Court acts as a Criminal Court and not as a Civil Court while disposing of applications filed under Section 125 of the Cr.P.C. in exercise of its jurisdiction under Section 7(2) (i) of the Act.
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> 19. Section 127 Cr.P.C. empowers the Magistrate to alter or modify the order of maintenance on account of (i) change in the circumstances of the party paying or receiving maintenance or (ii) any decision of a Civil Court. The party entitled to alteration of orders can always move the Magistrate when there is a change of circumstance. If, during the pendency of proceedings under Section 125 Cr.P.C., there

> is a change in the circumstance, which entitles the petitioner to claim enhanced maintenance and for that purpose, the amendment petition is filed for enhanced quantum of maintenance already claimed, we are of the view that there is no prohibition in allowing that amendment petition. Since there has been no specific prohibition in the Cr.P.C. for allowing the petition for amendment in the proceedings under Chapter IX and as such, the Family Court cannot be said to have committed any jurisdictional error in allowing the amendment sought for by the petitioners in the M.C. proceedings.
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> Moreover, there is no restriction in the remand order of this Court prohibiting amendment of the petition. Both parties will get ample opportunity to substantiate their contentions by adducing further evidence. Therefore, no prejudice will be caused to the petitioner in this Original Petition (Family Court) by allowing the amendment. Accordingly, this O.P. (FC) is dismissed, as it is without any merits. We record our deep appreciation for the valuable assistance rendered by all the counsel, including the amicus curiae."

15. In case of **Sabita Sahoo vs. Capt. Khirod Kumar Sahoo, reported in II (1990) DMC 435**, the High Court of Orissa has discussed about the maintainability of application under Order 6 Rule 17 in proceedings under Section 125 of Cr.P.C. and observed as under :

> "7. Section 125, Cr.P.C. vests power in a Magistrate of the first class, inter alia, to order any person to make a monthly allowance for the maintenance of his wife if he is satisfied that the said person having sufficient means has neglected or refused to maintain his wife unable to maintain herself. Keeping in view the intent and purpose in enacting the provision and the purpose sought to be achieved it would be reasonable to assume that the Magistrate is vested with all ancillary powers necessary for the purpose of effectual and proper exercise of jurisdiction vested in him under Section 125, Cr.P.C. The power to permit the petitioner to amend the application under Section 125, Cr.P.C. is, in my view, an ancillary power of a purely procedural nature. Therefore, in the absence of any provision in the Criminal Procedure Code prohibiting exercise of such power the learned Magistrate

> could permit amendment of the application in exercise of the ancillary power. Further, the purpose of the amendment, as noticed earlier, was to correct the date of marriage stated in the application and to elucidate certain facts stated therein. The amendment was intended to put the opp. party to notice of the facts and thereby help the Magistrate in conducting the proceeding fairly and properly. Therefore though the learned Magistrate was right in holding that the provision of Order 6, Rule 17, C.P.C. in terms did not apply to the proceeding under Section 125 Cr.P.C., he was not right in holding that he had no jurisdiction to permit the petitioner to amend her application. If any authority is necessary to support this view, I may refer to the decision of the Bombay High Court in the case of **Haribhau Kisan Patil v. Manorma and Anr., reported in II (1985) DMC 230**. In that case the Bombay High Court relying on two earlier decisions of the Court reported in **1980 Mh. L.J. 871 (Baburao Akaram v. Kusum Baburao) and 1981 Mh. L.J. 907 (Marotrae v. Chandrakanta)** held that the Magistrate had jurisdiction to allow amendment of the application under Section 125, Cr.P.C."

16. Thus, in the light of the above principles, the Magistrate can allow the amendment application in the proceedings pending under Section 125 of Cr.P.C.

17. Although, it cannot be ignored that the respondent received Rs. 50,000/- in the year 2005. However, now after a lapse of 14 years, circumstances have changed. Cost of living has increased due to hike in prices of essential commodities. Daily basic needs of the respondent has also changed with her age. Rise in cost of living amounts to the change in circumstances entitling the wife to claims enhanced maintenance. Similarly husband can also claim to reduce or amend the allowance. Simultaneously, income of the applicant has also increased. Therefore, proposed amendments are

relevant for consideration of the application filed by the respondent under Section 125 of the Cr.P.C.

18. It is pertinent to note that the learned trial Court also granted liberty in favour of the applicant to file consequential amendment in rebuttal of the proposed amendment. Therefore, no prejudice has been caused to the applicant. He can oppose the prayer of the respondent by filing consequential amendment application and Magistrate can make elaborate enquiry and then only an appropriate order for annulment or alteration can be passed. There would be no legal bar for alternative allowance already fixed in favour of the wife merely because the said order was passed on the basis of compromise between the parties. Meaning thereby that the wife is not barred from claiming enhanced maintenance especially when no such restriction has been imposed in compromise.

19. In case of **State of Rajasthan vs Fatehkaran Mehdu reported in (2017) 3 SCC 198**, the Hon'ble Supreme Court has held that jurisdiction of High Court in criminal revision is limited to correction of patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding of the inferior Court.

20. In view of the principles laid down in the aforementioned cases, this Court does not find any perversity or illegality in the impugned order passed by the learned trial Court in allowing the

amendment application under Order 6 Rule 17 of the Code of Civil Procedure.

21. Accordingly, this criminal revision stands **dismissed**, being without merit.

(Smt. Anjuli Palo)
Judge

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