
(2007) 03 JH CK 0041
In the Jharkhand High Court
Case No : Criminal M.P. No. 1065 of 2005

Ehsan Ansari

APPELLANT

Vs

State of Jharkhand and Rehana Parvin

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125 , 126, 127, 128
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3, 4, 5
Penal Code, 1860 (IPC) — Section 498A

Citation : (2007) 2 BLJR 1599 : (2007) 2 DMC 751 : (2007) 4 JCR 479

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : P.R. Bhagat, for the Appellant; Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioner in this application has prayed for quashing the order dated 15.9.2005 passed by the Principal Judge, Family Court, Bokaro, in Maintenance Case No. 39 of 2003 whereby prayer of the Opposite Party No. 2 for allowing certain amendments to be carried out in the application u/s 125 Cr.P.C. has been allowed.

2. The factual background of the case is that the opposite party No. 2 Claiming herself to be the wife of the petitioner has filed an application for maintenance u/s 125 Cr. P. C. along with Sections 3, 4, 5 of the Muslim Women's (Protection of Rights on Divorce) Act 1986, which is pending enquiry before the learned court below. While seeking to make amendment, the opposite party No. 2 has wanted to delete the words "And under Sections 3, 4, and 5 of the Muslim Women (Protection of Rights on Divorce) Act. 1986" appearing in the cause title after the name and address of the opposite party and after the words Cr.P.C. She has also wanted to insert a new paragraph as paragraph 1(a) containing the following statement:

That the petitioner was earlier married with one Md. Ali Sabbir Ansari on

24.11.1997 but the petitioner was divorced by her husband namely Ali Sabbir Ansari in presence of the members of the Islahul Muslemin committee on 11.10.1999 as per the Muslim rites and customs

She has further wanted that after the word "that" in the first line of paragraph 2 of her petition, the word "thereafter" be added and the word "was" be substituted by words "has been" in the same line.

3. The petitioner appearing as opposite party No. 2 in the aforesaid proceeding had filed his objection. After hearing the parties and overruling the objection raised by the petitioner, learned court below allowed the prayer for amendment.

4. The main ground advanced by the petitioner in support of his prayer for quashing the impugned order of the learned court below is that the prayer for amendment as made by the opposite party No. 2 is totally alien to the provisions of the Code of Criminal procedure, since the Code does not contain any provision allowing amendment to the petition and neither has any provision for amendment of the petition been incorporated or described or permitted in the Family Courts Act, 1984.

5. Learned Counsel for the petitioner explains that though the opposite party No. 2 has claimed herself to be the legally married wife of the petitioner, but the same has been denied and disputed by him in his show cause reply filed before the trial court and on the contrary, he has pointed out that the opposite party No. 2 was married to another person namely, Md. Ali Sabbir Ansari, and the marriage was solemnized on 24.11.1997 and earlier the opposite party No. 2 had preferred a criminal proceeding u/s 498A IPC against her husband Md. Ali Sabbir Ansari by way of complaint registered as Complaint Case No. 19 of 1999 (T.R. No. 855 of 1999) which was dismissed on 8.12.1999. The petitioner had further pointed out that the marriage of the opposite party No. 2 with Md. Ali Sabbir Ansari was still subsisting even on the date of the filing of the instant case and was never declared as divorced or nullified by any competent court of law. Learned Counsel adds further that by allowing the prayer for amendment, the learned court below has illegally allowed the opposite party No. 2 to change the nature of her case which would invariably cause prejudice to the petitioner. Learned Counsel explains that as per the provisions of 3, 4, and 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, a divorced Muslim wife cannot claim maintenance u/s 125 Cr.P.C. and the declaration on affidavit which was essentially needed to be given by the opposite party No. 2 under the provisions of Section 5 of the Act claiming her preference to be governed u/s 125 to 128 Cr.P.C. exclusively, having not been made, the very nature of the entire case would be changed since deleting the reference to Section 3, 4 and 5 of the aforesaid Act, 1986 would amount to the case being filed u/s 125 Cr.P.C.

6. Learned Counsel for the opposite party No. 2 while refuting the entire claim of the petitioner submits that the proceedings u/s 125 Cr.P. C is not strictly a criminal proceeding and is amenable to the provisions of the CPC and there is no

provision in the Code of Criminal procedure which prohibits amendment in the original application filed u/s 125 Cr.P.C. Learned Counsel explains that the fact which the opposite party No. 2 has intended to introduce in her application are nothing new, as the same has been stated and put forth by the petitioner himself, though the only point of contradiction being that the petitioner had conveniently suppressed the fact that to his own knowledge, marriage of the opposite party No. 2 with the said Md. Ali Sabbir Ansari was dissolved long ago by way of divorce according to the Muslim rites and customs and it is absolutely false to claim that on the date of her marriage with the petitioner, her marital ties with his former husband was subsisting.

7. Basic controversy raised by the rival arguments of the counsel for the parties is in respect of order dated 15.9.2005 is whether the impugned order permitting the opposite party No. 2 to carry out certain amendments as mentioned above in her application, is permissible in law?

8. To reiterate, the opposite party No. 2 had filed her application for maintenance not only u/s 125 Cr.P.C. but the petition was also purported to be filed under Sections 3, 4, and 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. By way of proposed amendment, the opposite party No. 2 has sought to introduce a fresh paragraph incorporating statement of certain facts regarding her previous marriage with another person. The above fact sought to be introduced which was apparently omitted in the original application, was not new to the petitioner since it was already within his knowledge and the opposite party No. 2 was only reminded and prompted to introduce the facts by the show cause reply filed in the proceeding by the petitioner. Therefore, the introduction of the said statement of facts by way of amendment cannot be said to take the petitioner by surprise, nor does it introduce any such fact contrary to the stand originally taken by the opposite party No. 2 in her application claiming for maintenance against the petitioner.

The opposite party No. 2 has also opted for deletion of the reference in her petition to Sections 3, 4, and 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Though such reference has been made in the cause title, but the opposite party No. 2 does not appear to have claimed or accepted that the petitioner had divorced her or that she is a divorced lady. Even if the petitioner has claimed to have divorced the opposite party No. 2, but in view of her denial, the matter certainly rests with the inquiring Magistrate to consider the controversy as a relevant issue and to decide the same. It is only thereafter that the issue whether the provisions of Sections 3, 4, and 5 of the Muslim Women (Protection of Rights on Divorce) Act 1986 would be applicable or not, would be considered. If the trial court finds that there is ground for application of the aforesaid provisions, then it is for the trial court to decide as to whether proceedings u/s 125 Cr.P.C. should be allowed to continue in absence of compliance of Section 5 of the aforesaid special Act relating to the Muslim personal law. In view of the pleadings and averments contained in the application

for maintenance filed by the opposite party No. 2, the deletion of the reference to Sections 3, 4, and 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 is an option, which the opposite party No. 2 has exercised regard being had to the nature of her claim and the grounds advanced therefor. The impugned order passed by the learned court below therefore does not suffer from any infirmity or illegality merely because it had allowed the opposite party No. 2 to exercise her option for deleting the reference to the aforesaid special Act in her application.

9. As regards the controversy whether the Code of Criminal Procedure permits amendment to the petition, it needs to be noted that the proceedings u/s 125 of the Code of Criminal Procedure is not strictly a criminal proceeding. Rather it is more in the nature of a civil proceeding. Amendment in the petition is therefore not prohibited and is permissible in law as long as it does not change the nature of the proceeding or causes prejudice to the other party. It may further be seen that the claim for maintenance as made by the opposite party No. 2 is based entirely on certain asserted facts in respect of her relation with the petitioner. Fresh fact sought to be introduced by her by way of amendment to her original petition merely explains certain circumstances and anticipated controversies. The said facts are not incidental to the grounds on which the claim for maintenance against the petitioner has been advanced.

10. I do not find any illegality or infirmity in the impugned order dated 15.9.2005 passed by the learned court below.

For the reasons aforesaid, I do not find any merit in this application, which is accordingly dismissed.