

Order no 16
date 10.06.2022

Today the petitioner filed the application for amendment.

Copy served,

Objected To

Now the case record is taken up for hearing with the consent of both the parties.

Heard both sides at length.

The case record is taken up for passing necessary order. Considered.

The Petitioner has filed an amendment application today with a prayer to amend the petition u/s 125 Cr.P.C. on the ground that some subsequent material facts have not been incorporated in the said petition and for just adjudication of the case, those facts are required to be incorporated by way of amendment. Since initially the petition was made for maintenance of three child but now two of the child are staying with their father.

The O.P. raised verbal objection and however has not filed any written objection against the amendment application. The principle of amendment enumerated in the law that a party cannot avail the amendment if the fact was not well within the knowledge at the time of filling the petition or pleadings in his favour and /or the same has arisen subsequently.

In the Code of Criminal Procedure, there is no specific provision to amend the petition which was filed under section 125 Cr.P.C. However, the petition under section 125 Cr.P.C. is quasi civil in nature and the amendment of the petition under section 125 is permissible under the provision of Order VI, Rule 17 of the Code of Civil Procedure.

Before going into the other aspects of the issues involved, let me, at first, discuss about the nature of the proceedings under Section 125 of the Code. No doubt, it is a social legislation to protect the women/children/parents, who are in need of support. When such claim for maintenance is made under the personal law, the right is decided by the Civil Court. Only with a view to have a speedy disposal of such claims for maintenance, having regard to the urgent need of the victims of desertion and neglect, the Parliament thought it fit to incorporate the provision to enable the victims to claim maintenance through the criminal court. Thus, though a petition under Section 125 (1) of the Code is made before the criminal court - as defined under Section 6 of the Code essentially, the right that is decided by the said Court is purely civil in nature. Therefore, undoubtedly, the order made by the Magistrate under Section 125 (1) of the Code for maintenance is the culmination of such a civil right of an individual. But, Section 125(3) of the Code empowers the Court to impose a sentence of imprisonment, in the event of failure to obey such order made

under Section 125(1) of the Code. To this extent, the proceeding is criminal in nature. To put it comprehensively, a proceeding initiated under Section 125 of the Code is quasi-civil and quasi-criminal. The Hon'ble Supreme Court has held so in several judgements. Regarding the procedure for making claim before the Court for maintenance, what is filed under Section 125 (1) of the Code is pure and simple a petition and not a complaint as defined in Section 2(d) of the Code. This would again indicate that a proceeding under Section 125 of the Code is treated as a quasi-civil and quasi criminal proceeding.

In the instant case, the evidence has not been started and the facts stated are subsequent facts of relinquishment of claim of maintenance of two child.

It appears from the record that the same amendment is not changing the nature and character of the case as such the same is liable to be allowed for causing effective adjudication of the disputes as such the prayer stands allowed.

Hence, it is,

ORDERED

That the petition for amendment is hereby considered and allowed and the petition is made part of the petition .

D/A to do the needful.

Petitioner to file amended petition .

Fix 19.07.22 for amended petition , and filing of additional W.O.If any

Both the parties are directed to file Affidavit of disclosure of Asset and liabilities on the next date positively.