



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMP No. 137 of 2026

An application under Articles 226 and 227 of the Constitution of India.

Suresh Kumar Behera ***Petitioner***

-versus-

1. Pilurani Behera
2. Monali Monisha Behera
3. Piyush Behera ***Opposite Parties***

Advocates who appeared in this case:

For Petitioner : Mr. Rabi Narayan Panda,
Advocate

For Opposite Parties : Mr. P.K. Satapthy,
Advocate

CORAM:

HON'BLE MISS JUSTICE SAVITRI RATHO
JUDGMENT

Date of Hearing: 26th March, 2026

Date of Judgment: 29th April, 2026

Savitri Ratho, J. The CRLMP has been filed challenging the order dated 21.11.2025 passed by the learned Judge, Family Court, Bhadrak in Criminal Proceeding No.37 of 2024 rejecting the prayer for amendment of the objection filed by the Petitioner in the Criminal Proceeding.



BACK GROUND FACTS

2. Opposite party No.1 is the wife of the Petitioner while Opposite Parties No. 2 and 3 are their children. The Opposite Parties had filed Criminal Proceeding No.37 of 2024 in the Court of the learned Judge, Family Court, Bhadrak under Section 125 of the Cr.P.C. claiming maintenance. As per their application, Petitioner and Opposite party No. 1 had got married on 11.12.2005, according to Hindu rites and customs. At the time of marriage, as per demand, Rs. 1,48,000/- along with gold and silver ornaments and other household articles were given to the petitioner. After the marriage, both parties lived happily and out of the said wedlock, on 14.01.2007, a daughter was born and on 08.01.2013, a son was born. After about six months of the birth of the son, the Petitioner started neglecting and ill-treating the Opposite parties. He failed to provide food and basic necessities to the Opposite parties. Finding no other alternative, Opposite Parties moved to the parental home of Opposite Party No.1 and filed the application for payment of maintenance.

3. Objection was filed by the Petitioner denying the allegations and praying for its dismissal. He stated that there was no cause of action for filing the application. He also stated that Opposite



Party No.1 had deserted him and was staying with her parents. As she was neglecting the children, he had brought the children to Bhadrak and was looking after them and their education. The Opposite Party No.1 along with her brothers had threatened to kill him. She had stopped having relations with him after birth of their second child and neglected him, his parents and the children.

4. On 23.07.2025, Opposite Parties had been examined and cross examined. When the case was posted for evidence of the petitioner, an application for amendment of the written objection was filed by the Petitioner stating that in the meanwhile, Petitioner had gone to his native village, Urunia to meet his old mother. There he found a paper box which was used by the Opposite Party No.1 which contained some objectionable photographs of the Opposite Party No.1 with another man. As the Petitioner has no knowledge about these photographs at the time of filing his written objection, he could not mention about this in his written objection. He therefore filed an application for amendment of his written objection for proper adjudication of the matter but the same has been illegally rejected.

IMPUGNED ORDER

5. The learned trial Court rejected the application holding that evidence of the wife had already been recorded and the case was



adjourned for evidence of Opposite Party (husband). But he did not adduce evidence on 03.03.2025, 29.04.2025, 12.05.2025, 23.06.2025 and 16.07.2025. He filed the application for amendment on 23.07.2025. The wife has been cross-examined extensively and has questions regarding character has been put to her. As the proceeding under Section 125 of Cr.P.C. is a benevolent one, introduction of additional facts is not necessary.

SUBMISSION

6. Mr. Rabi Narayan Panda, learned counsel for the Petitioner submitted that the impugned order passed by the learned Judge, Family Court, Bhadrak is erroneous, illegal, unreasonable and non-application of judicial mind. He submitted that the petitioner had filed similar amendment application in C.P No. 376 of 2024 filed by him for divorce and petition was allowed vide order dated 18.10.2025 but his application for amendment of his written statement has been illegally rejected. He further submitted that unless the impugned order is set aside and the amendment allowed, the petitioner will be put to irreparable loss and injury. In support of his submission, learned counsel for the Petitioner relied on the following decisions :

- (i) ***Sabita Sahoo vs. Khirod Kumar Sahoo : 1990 (I) OLR 420***
- (ii) ***Hemanta Kumar Ray vs. Romani Das : 2024 (II) OLR 362***



(iii) ***Bindeswari Prasad Singh vs. Kali Singh : (1977) 1 SCC 57***

7. Mr. P.K. Satapathy, learned counsel for the Opposite Parties vehemently opposed the submissions of the Mr Panda learned counsel and submitted that after taking a number of adjournments , the application for amendment has been filed deliberately to delay the proceeding which was pending since long . This is reflected in the impugned order where the learned Court below has referred to the dates of adjournments after the Opposite Party No1 was cross-examined. He also submits that if the photographs had actually been found on 15.07.2025, this fact could have been brought to the notice of the Court when the Opposite Party No.1 was being cross-examined. During cross-examination of the Opposite Party No.1 in this case, her examination in the learned Court below. When the case was being adjourned for evidence of the Petitioner, he has filed the application for amendment, from which it is apparent that it has been filed only to delay disposal of the proceeding. He further submits that till date the Petitioner has not paid any amount towards interim maintenance to the Opposite Parties and the Opposite Party No.1 has been cross-examined in extenso. Mr. P.K. Satapathy, learned counsel for the Opposite Parties submitted fairly that the prayer for amendment of the written statement / objection in a proceeding under Section 125 of the Cr.P.C is maintainable, but the



amendment cannot be allowed mechanically. The petitioner had never alleged adultery or raised any question about her character and this was entirely a new plea and in the facts and circumstances of the case, the proposed amendment will displace the Opposite Party No.1 from her original stand and cause her prejudice and hence no interference with the impugned order is required. In support of his submissions, he relied on the following decisions:

- (i) ***Kunapareddy @ Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari : 2016 11 SCC 774*** (para-17)
- (ii) ***Golla Gopal vs. M. Swathi*** (Criminal Petition No. 8125 of 2023 decided on 20.08.2024) (para-10, 14 and 15).
- (iii) ***S.R. Sukumar vs. S. Sunaad Raghuram : (2015) 9 SCC 609*** (para-18).

JUDICIAL PRONOUNCEMENT

8. In the case of ***Sabita Sahoo*** (supra), this Court has held as follows:-

“4.From the discussions in the impugned order it is evident that, the said ground for rejection of the prayer for amendment of the application under Section 125, Cr.P.C. was that Order 6, Rule 17, C.P.C. has no application to the proceeding under Section 125, Cr.P.C., since it was not a proceeding of civil nature and the Criminal Procedure



*Code makes no provision enabling the Magistrate to permit amendment of the application under Section 125, Cr.P.C. The learned Magistrate relied on the decision of this Court in the case of **Norbet Kispatta v. Mst. Tersa Kerketa**, reported in **1971 CLJ 1496**.*

*6. I have carefully perused the decision of this Court in the case of **Norbet Kispetta** (supra). In my view, the learned Magistrate did not correctly interpret the ratio in the decision to mean that in a proceeding under Section 125, Cr.P.C. (Section 488 of the Criminal Procedure Code, 1898) the Magistrate has no power to permit amendment of the application. In that case the Court was considering the correctness of the contention that the proceeding under Section 488, Cr.P.C. being of a civil nature, the petition filed is in the nature of a plaint in the civil suit and therefore the petitioner must be bound down to the averments made in the petition. This Court negated the contention relying on the decision of the Supreme Court in the case of **Nand Lal Misra v. Kanhaiya Lal Misra**, reported in MANU/SC/0088/1960 that though the relief given under Chapter XXXVI which includes Section 488, Cr.P.C. is essentially of a civil nature, all the same the proceedings under the said Chapter are not civil proceedings so as to attract the provisions of the Civil Procedure Code as the said proceedings are wholly governed by the provisions of the Criminal Procedure Code and that being so the provisions of Chapters VI, VII and*



VIII, Civil Procedure Code relating to pleadings in a civil suit did not apply to a petition under Section 488, Cr.P.C. In essence, what was held by this Court was that the rigour of the rule of pleading does not apply to a proceeding under Section 488, Cr.P.C. and the applicant is not to be bound down to the statements contained in the application. This Court did not deal with the question of the Court's power to permit amendment of the application under Section 488, Cr.P.C. Therefore the learned Magistrate was not right in concluding from the aforementioned decision that he had no power to consider the petitioner's prayer to amend her application under Section 125, Cr.P.C.

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. s, 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 **2 (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."*

The case of **Hemanta Kumar Ray** (Supra), is not relevant for deciding this application as that was a case where the decision



awarding maintenance and the quantum of maintenance was under challenge .

The decision in the case of ***Bindeswari Prasad Singh*** (supra), is also not relevant for deciding this application as in that case, the Supreme Court was deciding if the Magistrate had the jurisdiction to recall its order. It was held that the Magistrate becomes functus officio after passing the order and could not have recalled its order as there is no provision like Section 151 of the C.P.C. vesting Magistrates with inherent power in criminal proceedings to recall his / her order.

In the case of ***Kunapareddy @ Nookala Shanka Balaji*** (Supra), the Supreme Court has held as follows:-

“17. We understood in this backdrop, it cannot be said that the Court dealing with the application under DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events [escalation of prices in the instant case] or to avoid multiplicity of litigation, Court will have power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that respondent no. I was not entitled to file another application claiming the reliefs which she sought to include in the pending application by



*way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal Courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances. The pronouncement on this is contained in the recent judgment of this Court in **S.R. Sukumar vs. S. Sunaad Raghuram (2015) 9 SCC 609** in the following paras:*

*"17. Insofar as merits of the contention regarding allowing is true that there is of amendment application, it 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. In **U.P. Pollution Control Board vs. Modi Distillery And Ors.. (1987) 3 SCC 684**. wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. The name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-*

"...The learned Single Judge has focused his attention only on the [pic] technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude



of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery.... Furthermore, the legal infirmity is of such a nature which could be easily cured..."

*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 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.*

19. In the instant case, the amendment application was filed the amendment by adding on 24.05.2007 to carry out paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken



cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem "Khalnayakaru being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India."

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.

19. In this context, provisions of Sub-Section (2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-Section (1) of Section 28 are to be governed by the Code, the Legislature at the same time incorporated the provisions like sub-Section (2) as well which empowers the Court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the DV Act.

This provision has been incorporated by the Legislature keeping a definite purpose in mind. Under Section 12, an application can



be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex-parte orders and sub-Section (2) of Section 23 is a special provision carved out in this behalf which is as follows:

"(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

20. The reliefs that can be granted by the final order or an by interim order, have already been pointed out above wherein it is noticed that most of these reliefs are of civil nature. If the power to amend the complaint/application etc. is not read into the aforesaid provision, the very purpose which the Act attempts to sub-serve itself may be defeated in many cases.

21. We, thus, are of the opinion that the amendment was rightly allowed by the Trial Court and there is no blemish in the impugned judgment of the High Court affirming the order of the Trial Court. This appeal is, this, devoid of any merits and is , accordingly, dismissed with costs."

In the case of **Golla Gopal** (Supra), Telangana Court has held as follows:-

"Having regard to the rival submissions made and on going through the material placed on record, it is noted that the



contention of learned counsel for petitioner is that the trial Court erred in allowing a petition filed under Order VI Rule 17 of C.P.C. permitting the respondents to amend the maintenance petition filed under Section 125 of Cr.P.C. as the same is contrary to Section 10(1) and (2) of the Act 1984 and that the same cannot be applicable as per Chapter IX of the Cr.P.C. whereas, it is seen that the trial Court has allowed the said petition by applying the provisions contemplated under Section 10 clause (3) of the Act, 1984. That being so, it is to be seen whether Section 125 of Cr.P.C. covered by Chapter IX of Cr.P.C. is applicable in petition filed under Order VI Rule 17 of C.P.C.”

ANALYSIS AND CONCLUSION

9. It is a well settled principle of law that the provision of Section 125 Cr.PC is a measure of social justice meant to protect women and children from vagrancy and destitution and provides a speedy remedy for maintenance of a neglected or deserted wife/ parents and children. In order to provide expeditious relief, the proceedings under Section – 125 of the Cr.P.C are summary in nature.

10. In view of the decisions referred to above, it cannot be disputed that amendment of the application under Section 125 of the Cr.P.C as well as the written statement / objection is permissible as there is no prohibition in the Cr.P.C for allowing such amendment, if



such amendment is necessary for deciding the application and is bonafide.

11. After perusal of this objection of the petitioner and the cross-examination of the Opposite Parties No.1, I find that the petitioner had never made any allegation regarding her character. Allowing the application for amendment would therefore result in allowing a completely new plea. The petitioner has been taking repeated adjournments to adduce evidence. Allowing a new plea would cause further delay in the proceedings and cause prejudice to the Opposite Party No.1 who has already led her evidence and has been cross-examined. It will unnecessarily further delay the disposal of the proceeding under Section – 125 of the Cr.P.C. It would therefore not be in the interest of justice to allow the prayer for amendment. If the petitioner (husband) is able to prove in the Civil Proceeding that the wife is guilty of adultery, it will have a bearing on the proceeding as well as the decision in the proceeding under Section – 125 Cr.P.C.

12. The learned Judge, Family Court, Bhadrak has passed a reasoned order with due application of mind, while rejecting the amendment petition. Hence, I am not satisfied that any interference is called for in the impugned order.



13. I am therefore not inclined to exercise power under Article 226 or 227 of the Constitution of India to interfere with the impugned order.

14. The CRLMP being devoid of merit is dismissed

15. Urgent certified copy of this order be granted on proper application.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated the 29th April, 2026 /Sukanta / Subhalaxmi