CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 23RD DAY OF JUNE 2023 / 2ND ASHADHA, 1945

OP(CRL.) NO. 314 OF 2023

AGAINST THE ORDER/JUDGMENT IN MC 179/2018 OF FAMILY COURT, PALAKKAD

PETITIONER/RESPONDENT:

GOVINDARAJAN @ GOVIND,
AGED 36 YEARS,
S/O RAGHUPATHY A-163,SECTOR 18B,ATHULYA APARTMENT,
DWARAKA, NEW DELHI, PIN - 110075

BY ADVS.
RAJESH SIVARAMANKUTTY
ARUL MURALIDHARAN

RESPONDENTS/PETITIONERS:

1 VIDYA,
AGED 31 YEARS
D/O VLSWANATHA LYYER, RESIDING AT TEMPLE CHARIOT G-C,PUDUPALLITHERUVU, PALAKKAD TALUK, PALAKKAD DISTRICT., PIN - 678004

2 SAMANVITHA (MINOR)
AGED 4 YEARS
D/O GOVINDARAJAN @ GOVIND TEMPLE CHARIOT G-C,PUDUPALLITHERUVU, PALAKKAD TALUK, PALAKKAD DISTRICT, (MINOR 2ND RESPONDENTS IS REP.BY GUARDIAN MOTHER-1ST RESPONDENT), PIN - 678004

BY ADV SRUTHY N BHAT

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 21.06.2023, THE COURT ON 23/6/2023 DELIVERED THE FOLLOWING:

V.G.ARUN J.

O.P.(Crl.) No.314 of 2023

Dated this the 23rd day of June 2023

JUDGMENT

The petitioner is the respondent in MC No.179/2018 pending on the files of the Family Court, Palakkad. The MC is filed by the petitioner's wife and minor child, arrayed as respondents 1 and 2 herein. The challenge in this original petition is against Ext.P4 order of the Family Court, allowing an application for amendment filed by the respondents.

2. Adv.Rajesh Sivaramankutty, learned Counsel for the petitioner contended that, in the absence of any provision for amendment in the Code of Criminal Procedure, the Family Court committed gross illegality in passing Ext.P4 order. Even if the Family Court is taken to be having the power to permit amendment of pleadings, that can only be of formal in nature. In the case at hand the attempt of the respondents is to incorporate new facts and allegations, in order to get over the valid contentions in the objection filed by the petitioner herein.

3. Adv.Sruthy N.Bhat, learned Counsel for the respondents, submitted that the maintenance case, as originally filed, did not

contain the requisite details. Hence, the amendment application was filed for supplementing the pleadings already on record. It is contended that, even in the absence of any specific provision, the Family Court is empowered to permit amendment of pleadings in the interest of justice. In support of the contention reliance is placed on the decisions of this Court in **Madhavi v. Thupran (1987 (1) KLT 488)**, of the Madras High Court in **Ramarajan v. Krishnan (MANU/TN/0694/2021)** & **Nallan v. Palaniammal (1998 SCC OnLine Mad 1558)** and of the Orissa High Court **in Sabita Sahoo v. Khirod Kumar Sahoo (1990 SCC OnLine Ori.433)**.

4. The question whether an application for amendment could be allowed in the absence of any provision in the Code enabling the amendment of pleadings, was considered and answered by the Supreme Court in **U.P. Pollution Control Board v. Modi Distillery and Others [(1987) 3 SCC 684]**. Therein, the complaint under Section 200 of Cr.P.C was filed without impleading. This infirmity was sought to be cured through an impleadment application. The trial court allowed the impleadment. That order was challenged by the Directors of the company, who are arrayed as accused. The challenge was upheld by the High Court, but the Apex Court interfered with that

judgment and found fault with the Single Judge for having focused only on the technical flaw in the complaint. It was held that the infirmity was one which could be easily cured by remitting the matter to the trial court with a direction to make the requisite amendment, by arraying the controlling company as an accused. The decision in **U.P. Pollution Control Board (supra)** was referred and approved in **S.R. Sukumar v. S. Sunaad Raghuram [(2015) 9 SCC 609**], the relevant portion of which reads as under;

> "19. What is discernible from *U.P. Pollution Control Board case* [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] 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 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. This Court had occasion to consider the power of criminal courts to permit amendment of pleadings in maintenance cases in

Madhavi (**supra**). Therein, the petitioner had mistakenly shown her name as 'Malathi' instead of 'Madhavi'. On realising the mistake, she filed a petition seeking permission to correct her name. That petition was dismissed by the Magistrate on the premise that the prayer, if allowed, will amount to amendment of pleadings for which the criminal court has no jurisdiction. The challenge against that order was allowed by this Court. Paragraph 6 of the judgment being contextually relevant, is extracted hereunder;

> "6. In this case we are not concerned with the question whether a criminal court has the power to allow amendment of pleadings. What was involved was only a correction of a clerical mistake to do justice to the parties. To say that even after being convinced of the genuineness of the mistake the court is powerless to grant relief cannot be accepted. When parties had no dispute that first petitioner is Madhavi, the wife of the respondent and mother of the minors, how can the court refuse relief on the technical ground that a wrong name is given in the petition. Courts are existing for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under S.482 of the Cr. P.C. is only in favour of High Courts, the subordinate criminal courts are also not powerless in cases like this to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision provided there is no prohibition and no illegality or miscarriage of justice is involved. Under such circumstances in order to do what is

absolutely necessary in the ends of justice or prevent prejudice or miscarriage of justice what is not prohibited could be taken as permitted because the Code of Criminal Procedure cannot be taken to have contemplated and provided for every contingency by making exhaustive provisions to meet the situations. All the criminal courts are having such an auxiliary power subject to restrictions which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else".

6. A different view was taken by another learned Judge in **Linda John Abraham v. Business India Group Company and Others (2011 (4) KLT 787)**. It is pertinent to note that the main reason that had prompted this Court to deny permission for amendment was that the amendment goes to the core of the matter and if allowed, would result in substantial change in the complaint.

7. Recently in **Kuttan v. Varanamalyam Kuries (P) Ltd. and Another (2020 (1) KHC 551)**, the power to permit amendment to a complaint filed under Section 142 of the Negotiable Instruments Act, came up for consideration and was answered as under;

"14. The principles that can be culled out from the aforesaid decisions can be stated as follows. Though there is no express provision in the Code of Criminal Procedure or the Act empowering a Magistrate to permit amendment of a complaint filed for an offence under S.138 of the Act, in the

absence of any prohibition with regard to exercise of such power, the Magistrate can exercise such power in appropriate cases to cause the advancement of justice. If the amendment of the complaint proposed is only formal and not substantial, it can be allowed. But, if the amendment of the complaint would cause serious prejudice to the accused, it shall not be allowed. Correction of a typographical error or clerical mistake in the complaint can normally be permitted. If the amendment would change the nature and character of the complaint, the court shall now allow it as it would cause grave prejudice to the accused."

8. In **Nallan(supra)**, it is held that, even in the absence of any specific provision of law, the Magistrate can allow the amendment application filed in a maintenance petition in the interest of justice, by exercising the discretionary power. In **Sabita(supra),** referring to the the intent and purpose in enacting Section 125, it was held that 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 the jurisdiction vested under Section 125 Cr.PC. Further, the power to permit amendment being purely procedural in nature, the Magistrate can permit amendment even in the absence of any provision in the Code.

9. In my opinion, the objective of Section 125 being to ameliorate the sufferings of destitute wives and children, technicalities have no place in maintenance cases. The attempt

should be to assimilate the required details and reach the correct conclusion at the earliest, rather than mulling over mundane objections. The prejudice, if any caused to the husband by the amendment can be offset by permitting him to file an additional counter affidavit/objection.

In the result, the original petition is dismissed. The Family Court is directed to accept the additional counter affidavit, if any filed by the original petitioner within two weeks of receipt of a copy of this judgment.

Sd/-

V.G.ARUN

JUDGE

dpk

APPENDIX OF OP(CRL.) 314/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE PETITION DATED 6-7-2018 FILED BY 1ST RESPONDENT AGAINST PETITIONER IN M.C. NO.179/2018 BEFORE FAMILY COURT, PALAKKAD
Exhibit P2	TRUE COPY OF THE PETITION AS I.A.NO.1175/2022 IN M.C. NO.179/2018 FILED BY RESPONDENTS AGAINST PETITIONER BEFORE FAMILY COURT, PALAKKAD
Exhibit P3	TRUE COPY OF THE OBJECTIONS DATED 14-12-2022 SUBMITTED BY THE PETITIONER TO EXHIBIT P-2 BEFORE FAMILY COURT, PALAKKAD
Exhibit P4	CERTIFIED COPY OF THE ORDER DATED 16-12-2022 IN CRIMINAL MISCELLANEOUS PETITION NO.1175(A)/2022 IN M.C. NO.179/2018 PASSED BY THE FAMILY COURT, PALAKKAD