

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 209 of 2010
Judgment On: 16-04-2010.

Babulal Rui Das
versus
Aloka Rui Das @ Das & Ors

POINTS:

AMENDMENT- Petitioner denied that the opposite party is his legally married wife in a proceeding for maintenance-Petitioner filed application for amendment of his written objection- Whether amendment can be allowed in criminal case-Code of Criminal Procedure, 1973 S.125

FACTS:

The opposite party herein claiming herself the legally married wife of the petitioner brought an application under Section 125 of the Code of Criminal Procedure, for maintenance for herself and for her minor son. The petitioner appeared in the Court and filed his written objection claiming that he is a married man and refuting her claim. However, after the wife/opposite party's prayer for interim maintenance was allowed, the husband/petitioner filed an application for amendment of his objection, which has been rejected.

HELD:

By filing this amendment petition the present petitioner wanted to bring on record, as the part of his case, that he was married to some other lady, viz., one Sikha Rui Das and is a father of a female child Krishna Rui Das, aged about 17 years and a son Pallab Rui Das, aged about one year. Under

the scheme of Code of Criminal Procedure there is no provision for amendment of pleadings in any application, as such by not allowing the petitioner's prayer for amendment the Learned Magistrate cannot be said to have committed any mistake. Paras-4&5

For Petitioner : Mr. Mahiuddin Mondal
Mrs. Pinku Sarkar

For State : Mr. Sobhendu Sekhar Roy

For O.P. No. 1: Mr. Rwitendra Banerjee

THE COURT:

1. In connection with a proceeding under Section 125 of the Code of Criminal Procedure, the husband/petitioner moved an application for amendment of his written objection. The Learned Magistrate rejected such prayer, hence, this criminal revision.

2. Heard the learned advocate appearing on behalf of the petitioner as well as the learned advocates appearing on behalf of the State and wife/opposite party. Perused the impugned order and other materials on record.

3. The opposite party herein claiming herself the legally married wife of the petitioner, brought an application under Section 125 of the Code of Criminal Procedure, for maintenance for herself and for her minor son. The petitioner appeared in the Court and filed his written objection claiming that he is a married man and refuting her claim. However, after the wife/opposite party's prayer for interim maintenance was allowed, the husband/petitioner filed an application for amendment of his objection, which has been rejected.

4. It appears from the impugned order as well as other materials on record, in his written objection the petitioner/husband denied that the opposite party is his legally married wife and also denied the factum of marriage and his liability to maintain her. However, by filing this amendment petition the present petitioner wanted to bring on record as the part of his case that he was married to some other lady, viz., one Sikha Rui Das and is a father of a female child Krishna Rui Das, aged about 17 years and a son Pallab Rui Das, aged about one year.

5. Under the scheme of Code of Criminal Procedure there is no provision for amendment of pleadings in any application, as such by not allowing the petitioner's prayer for amendment the Learned Magistrate cannot be said to have committed any mistake.

6. However, it would not be out of place to note that it is althrough the petitioner's case that the opposite party is not his legally married wife and he was married to someone else. Thus, even without amending his objection he will no way be precluded to lead evidence to show that he was married to someone else to substantiate his claim.

7. This application, thus, stands disposed of.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(*Ashim Kumar Roy, J.*)

