

Court No. - 90

Case :- APPLICATION U/S 482 No. - 11601 of 2023

Applicant :- Meraj Akhtar

Opposite Party :- State Of U.P. And Anothers

Counsel for Applicant :- Pawnesh Tiwari, Shatrughan Yadav

Counsel for Opposite Party :- G.A., Dheeraj Kumar Singh

Hon'ble Dinesh Pathak, J.

1. Case called out and taken out of turn on the request made on behalf of learned counsel for the applicant. Notice has been served upon learned counsel for opposite party No.2, however, he is not present.

2. Copy of the notice with the endorsement of receiving made by learned counsel for respondent No.2 has been submitted to the court, which is taken on record.

3. Heard learned counsel for the applicant as well as learned AGA and perused the record on board.

4. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashing order dated 03.03.2023 passed by Additional Principal Judge, Family Court, Court No.1, Deoria in Misc. Recall Application No.561 of 2022 (Meraj Akhtar Vs. Tarannum Jahan), under Section 126 Cr.P.C., so far as it relates to imposing cost to the tune of Rs.50,000/- against the present applicant.

5. Despite time granted by this Court, vide order dated 10.5.2023, till date no counter affidavit has been filed on behalf of opposite party No.2.

6. Considering the peculiar facts and circumstances of the present case and order proposed to be passed herein under, this Court proceeds to decide the instant application ex-parte against the respondent No.2.

7. Instant matter is arising out of proceeding under Section 126 Cr.P.C. Application for maintenance under Section 125 Cr.P.C. moved on behalf of Smt. Tarannum Jahan (opposite party no.2) along with her minor son has been decreed ex-parte, vide order dated 15.2.2022, granting maintenance to the wife to the tune of Rs.4,000/- per mensem and to the minor son amounting Rs.2,000/- per mensem, total Rs.6,000/- per mensem.

8. Having been aggrieved with the ex-parte order dated 15.2.2022, present applicant (husband) has moved an application dated 16.05.2022 under Section 126 Cr.P.C. to recall the ex-parte order. Learned Court has allowed the application, vide order dated 03.03.2023, on the cost of Rs.50,000/- and restored the matter to its original number. Having been aggrieved, applicant has challenged the order dated 03.03.2023 showing his grievance only with respect to the cost imposed against him. Learned counsel for applicant has advanced short submission assailing the cost imposed against the present applicant that the cost is exorbitant and against the financial status of the present applicant and the same is not incommensurate with his income who is a labourer. It is further submitted that although applicant has put in an appearance in the proceeding, however, at later stage, owing to transfer of case to another court he could not trace/locate the record in correct court, which led ex-parte decision staging him. Cause of non appearance has been explained to the satisfaction of court concerned, who has allowed the applicant u/s 126Cr.P.C., however, imposed exorbitant cost. It is further submitted that some relaxation may be given to the present applicant in depositing the cost in pursuance of the order dated 03.03.2023.

10. In this conspectus, as above, considering the peculiar facts and circumstances of the present case, no useful purpose would be served to keep the instant application pending, therefore this Court deems fit to decide the instant application finally without entering into the merits of the case granting some relaxation to the present applicant in depositing the cost as imposed by learned Additional Principal Judge, Family Court, Court No.1, Deoria.

11. As such, application is partly **allowed** and order impugned dated 03.03.2023 is modified to the extent that present applicant will deposit Rs.30,000/- in place of Rs.50,000/- in compliance of order dated 03.03.2023 passed by learned Additional Principal Judge, Family Court, Court No.1, Deoria.

Order Date :- 12.10.2023

Md Faisal