

Court No. - 90

Case :- APPLICATION U/S 482 No. - 13750 of 2023

Applicant :- Arvind Gupta

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mahendra Pratap Singh

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

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant, learned counsel for the private respondent no.2 as well as learned A.G.A. for the State and perused the record on board.
2. The applicant has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. assailing the order for interim maintenance dated 10.02.2023 passed by Additional Principal Judge, Family Court, Court No.2, Kanpur in Case No.1234 of 2019 (Poonam and others Vs. Arvind) under Section 125 Cr.P.C.
3. Facts called out from the record are that the respondent no.2, alongwith her minor children (respondent nos.3 and 4 herein) has moved an application dated 25.10.2019 for maintenance under Section 125 Cr.P.C. Present applicant (husband) has filed his objection dated 03.08.2022 denying the pleadings made by respondent no.2 in the application under Section 125 Cr.P.C. for maintenance. During pendency of proceedings, the learned Family Court has passed an order dated 10.02.2023 granting interim maintenance to the wife (respondent no.2) to the tune of Rs.8000/- per mensem and to both children Rs.2000/- each per mensem, which is under challenge before this Court.
4. Learned counsel for the applicant submits that the amount of

interim maintenance as determined by learned Family Court is exorbitant and not incommensurate with the income of the present applicant. It is further submitted that the respondent no.2 has filed several other cases against the present applicant which are still pending consideration. It is further submitted that present applicant is vegetable carter and he is earning hardly Rs.250/- to Rs.300/- per day.

5. Per contra learned counsel for the respondent no.2 has vehemently opposed the submissions as raised by learned counsel for the applicant and contended that the applicant is wholesaler in vegetable business and also rented out of some property and, therefore, earning about 40,000/- per mensem.

6. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, it is manifested that in determining the per mensem income of the present applicant no evidence has been discussed by learned Family Court. It is own finding of the learned Family Court that the income of the present applicant is still to be decided on the basis of the evidence to be adduced by the parties. However, it is admitted position that the respondent no.2 is wedded wife of applicant no.1 and respondent nos. 3 and 4 are the children born out of wedlock with applicant no.1 and respondent no.2, therefore, marital status of the applicant no.1 with the respondent no.2 and their status being a parents of respondent nos. 2 and 3 is not disputed.

7. Therefore, it is solemn duty of the present applicant to maintain his family (wife and children). He can not evade his legal responsibilities from maintaining his family. So far as the quantum of interim maintenance as granted by learned family court is concerned, I am of the view that having considered the present

price rise and high living cost the amount of interim maintenance can not be said to be exorbitant. However, it's commensuration with the income of the present applicant may be a matter of concern and requires revisiting the matter.

8. However, having considered the peculiar facts and circumstances of the present case, I am of the view that no useful purpose would be served to keep the instant application pending, therefore, in the interest of justice, without considering the merits of the case, it would be befitting to modify the order impugned and minimise the amount of the interim maintenance granted by the learned family court.

9. In this conspectus, as above, to secure the ends of justice, instant application under Section 482 Cr.P.C. is partly allowed and the order impugned dated 10.02.2023 passed by Additional Principal Judge, Family Court, Court No.2, Kanpur in Case No.1234 of 2019 (Poonam and others Vs. Arvind) under Section 125 Cr.P.C. is hereby modified to the extent that amount of Rs.8000/- which has been ordered to be paid to the wife as an interim maintenance should be reduced upto amount of Rs.5000/- per mensem. Remaining order for interim maintenance granted to the children shall remain intact. However, it is made clear that any observation made by this Court in the order of the date would not affect the merits of the case at the time of final adjudication of application under Section 125 Cr.P.C.

10. Before parting the matter, learned counsel for the respondent no.2 has urged for issuing a direction for expeditious disposal of the application under Section 125 Cr.P.C. Having considered the peculiar facts and circumstances of the present case, wherein application for maintenance under Section 125 Cr.P.C. is pending

since 25.10.2019 and since then private respondent nos. 2, 3 and 4 are running from pillar to post to get their legal right and have been put to starving condition, learned Family Court is hereby directed to decide the aforesaid proceedings, expeditiously, preferably within a period of four months from the date of production of a certified copy of this order.

Order Date :- 30.11.2023/vkg