

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 8194 of 2023

Petitioner :- Mohammad Mustafa

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Nigamendra Shukla

Counsel for Respondent :- G.A., Syed Ahmed Faizan, Zaheer Asghar

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Nigamendra Shukla, learned counsel for the petitioner, Sri S.F.A. Naqvi, Senior Advocate, holding brief of Sri S.A. Faizan, learned counsel for the respondent nos. 2 and 3 and learned A.G.A. for the State.

2. The relevant facts are as below.

3. The respondent nos. 2 and 3/the applicants filed an application under section 125 Cr.P.C. against Mohd. Mustafa (the petitioner herein). Both sides led their oral and documentary evidence, the Additional Family Court No. 1 heard the matter on merits and passed an order on 29.05.2023, granting Rs. 30,000/- to Smt. Shaiesta and Rs. 25,000/- to Km. Evana as monthly maintenance payable from the date of the application. The opposite side has challenged the aforesaid order by filing this petition under article 227.

4. The submissions of the petitioner are in nutshell, that the finding of the family court on all the issues are perverse and against the evidence on record and that the family court, in violation of the provisions of Section 9 of Family Court Act, made no endeavour to carryout reconciliation/settlement proceedings between the parties. The version of the opposite side was never considered. The petitioner is suffering from various serious ailments since 2017. He suffered a heart attack and remained hospitalized. The respondents, taking advantage of his medical conditions, filed forged *Nikahnama* just to grab property owned by her husband. The family court did not appreciate the fact that he had no sufficient means to provide for maintenance. The evidence given on this point was not appreciated in right perspective, secondly, that respondent no. 2 is having means to sustain herself, as her elder son is doing job and that she herself is earning by running a boutique. Further it is submitted that the learned family court ignored all the evidence and decided the quantum of maintenance in disregard of law. It didn't consider that he had no means to pay the exorbitant amount fixed by it.

5. All the contentions of the petitioner are vehemently opposed and countered by the respondents submitting that all the issues and points raised by the petitioner relate to disputed questions of fact which cannot be decided in this proceeding under article 227.

6. My attention has been drawn to Section 19 of the Family Court Act, 1984, which is as below:

"19. Appeal.-

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the

Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. -(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law."

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties 1[or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

1[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.]

2[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.]"

2[(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

2[(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges. 3[(6)] An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

7. I went through the impugned judgment, bare perusal of the judgment gives an impression that all the issues raised by the rival sides were considered in the light of the provisions of section 125 Cr.P.C. The evidence given, was appreciated and the trial court found the application moved under section 125 Cr.P.C. worth acceptance. It may be noted that these facts are not disputed that respondent no.2 is legally wedded wife and respondent no.3 is their daughter.

8. I went through all the submissions as narrated in the petition and find that all the issues except one, raised relate to the disputed questions of fact which cannot be effectively adjudicated in a proceeding drawn under Article 227. Settled law is that, in a proceeding under Article 227, the court is not expected to go into and reappraise the evidence unless there is some glaring error of fact or law leading to miscarriage of justice. The scope of interference in exercise of supervisory jurisdiction on decision on facts is limited. The court cannot go deep into questions of fact like an appellate court. Moreover, it should also be noted that the petitioner has not applied for his right to file an appeal/revision as the case may be, which was available to him under section 19 of Family Court Act. It is difficult to understand why he didn't challenge the above orders under section 19 of the Family Court Act. Definitely the petitioner had much wider scope to assail the order, on the questions of fact as well as of law, if he had filed an appeal or revision as the case may be, before superior

court, as provided in law.

9. As far as application of section 9 of Family Court Act is concerned, the petitioner has failed to *prima facie* show that in fact no attempt was made by the court as provided by law. He has further failed to show that during the course of proceeding, he ever applied before the court concerned by moving an application that he wanted an amicable settlement and he has been so inclined and that his application was refused. I do not find any substance in his submission on this point.

10. The petition has no substance and is hereby **dismissed**. However, the decision on this petition shall not be construed as foreclosing his right to file appeal/revision as per the provisions of section 19 of Family Court Act.

Order Date :- 2.11.2023

Sumit Kumar