

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 8829 of 2023

Petitioner :- Atul Kumar Mishra

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Vinay Kumar Tripathi

Counsel for Respondent :- G.A., Ved Prakash Pandey

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Vinay Kumar Tripathi, learned counsel for the petitioner, Sri Ved Prakash Pandey, learned counsel for the private respondent no. 2 and Sri R.K. Verma, learned AGA for the State.

2. The relevant facts are as below:-

Smt. Alka Trivedi @ Meera filed an application under section 125 Cr.P.C., case no. 42 of 2020 against her husband demanding maintenance. During the course of the proceeding, the Additional Principal Judge, Family Court, Shahjahanpur heard upon the application moved for interim maintenance and passed an order dated 21.04.2023 granting Rs. 1,500/-, as interim maintenance. Meanwhile the wife filed another application under the Protection of Women from Domestic Violence Act 2005 (hereinafter referred to as 'D.V. Act'), criminal misc. case no. 12 of 2022 (Alka Trivedi @ Meera vs. Atul Kumar Mishra and others) before the Judicial Magistrate, Tilhar, Shahjahanpur. In that proceeding, the wife filed an application for grant of interim maintenance under section 23 of the D.V. Act and the same was allowed by an order dated 30.03.2022. The aforesaid order of interim maintenance was challenged by the husband by filing a criminal appeal no. 10 of 2023 (Atul Kumar Mishra vs. State of U.P. and another). This appeal was decided by passing an order dated 27.07.2023, dismissing the same and confirming the order of interim maintenance. The order passed by the Additional Session Judge in criminal appeal and the order passed by the Judicial Magistrate in proceeding under D.V. Act have been challenged by the petitioner in this petition. Further prayer of the petitioner is that the entire proceedings of criminal case no. 12 of 2022 be quashed.

3. It is submitted by the petitioner that the appellate court while dismissing the appeal, did not consider the fact that meanwhile an order for grant of interim maintenance had already been passed on 21.04.2023 by the Additional Principal Judge, Shahjahanpur in the proceeding under section 125 Cr.P.C. It is further submitted that the two orders of interim maintenance cannot be passed in favour of wife. The petitioner is paying the amount of Rs. 1,500/- as interim maintenance in 125 Cr.P.C. case. Ignoring the above facts the appellate court confirmed the order passed by the Magistrate granting further Rs. 2,000/- as interim maintenance in a later proceeding drawn under the provisions of D.V. Act.

4. This is not disputed that the order of the Magistrate (by which interim maintenance of Rs. 2,000/- was granted in D.V. Act) was in fact passed before

any order of interim maintenance was passed in a proceeding under section 125 Cr.P.C. For clarity, it may be noted that the order for interim maintenance in a proceeding under section 125 Cr.P.C. was passed on 21.04.2023 while in D.V. Act, it was passed on 30.03.2022. Admittedly, the order under section 23 of the D.V. Act was passed ex-parte and the husband never applied for recall of such an order and instead went in appeal. The order in appeal against D.V. Act interim order was passed much later and the appellant had ample opportunity to contend that he has been paying certain amount as interim maintenance in proceeding under section 125 Cr.P.C. My attention has been drawn to para-5 of the order of the appellate court. From perusal of the observation made in para-5, it appears that the husband brought this fact into notice of the appellate court that meanwhile an order of interim maintenance had already been passed in a proceeding under section 125 Cr.P.C. From the order of appellate court it is clear that the issue of grant of interim maintenance in two proceedings was raised and considered by the appellate court. This fact further catches the attention of this court that order of interim maintenance in the proceeding under section 125 Cr.P.C. was passed after hearing both the sides and that the order of interim maintenance was passed under section 125 Cr.P.C. much after the order of interim maintenance under D.V. Act was passed, therefore, the husband had an opportunity to bring these facts into notice of the court concerned but from the papers on record, it does not appear that he raised this issue before the family court. It is difficult to understand why did the husband never applied for recall of the ex-parte order and for giving him an opportunity to raise and contest the matter in the light of points, as are being raised now before this court.

5. I do not find any good ground for quashing the entire proceeding or impugned order and therefore the petition under Article 227 of the Constitution is **dismissed**.

Order Date :- 2.11.2023

#Vikram/-