

Court No. - 87

Case :- APPLICATION U/S 482 No. - 32518 of 2023

Applicant :- Lavi Kumar Tyagi

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Ashutosh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant and learned A.G.A. for the State.
3. Present 482 Cr.P.C. application has been filed to set aside impugned order dated 21.02.2023 passed in Crl. Misc. Case No. 991 of 2022 under Section 128 Cr.P.C. (Smt. Priya Tyagi Vs. Lavi Kumar Tyagi), arising out of Maintenance Case No. 240 of 2019, under Section 125 Cr.P.C., P.S.-Syana, District- Bulandshahar, pending in the court of Family Court-II, Bulandshahar.
4. Earlier applicant has filed divorce petition against opposite party No. 2, which was allowed by the Principal Judge, Family Court, Kairana at Shamli vide order dated 02.04.2021. In the meantime, application filed by opposite party No. 2 under Section 125 Cr.P.C. was allowed vide order dated 08.06.2022. Against order dated 08.06.2022, applicant preferred application under Section 126(2) Cr.P.C, but the same was dismissed. As order dated 08.06.2022 was not complied with, opposite party No. 2 preferred application under Section 128 Cr.P.C. on 28.07.2022 and Additional Principal Judge, Family Court vide order dated 21.02.2023 has issued recovery warrant in terms of order dated 08.06.2022 passed in application under Section 125 Cr.P.C., which is under challenge. He next submitted that Additional Principal Judge, Family Court vide order letter dated 05.07.2023 has directed the Deputy Inspector General(Establishment), Directorate General of Defence, New Delhi for recovery of Rs. 31,750/-(installment of arrears of maintenance) as well as Rs. 10,000/- as monthly maintenance from

the salary of the applicant as directed vide order dated 08.06.2022.

5. After some argument, learned counsel for the applicant submitted that he does not want to press the present application against order dated 21.02.2023 and only requested that considering the fact that gross salary of applicant is Rs. 57607/- and it is not practically possible for him to pay the amount as directed by Family Court vide order dated 08.06.2022. He next submitted that he is ready to comply with the order dated 08.06.2022 passed by Family Court, but the number of installments for payment of arrears may be increased to some extent.

6. I have considered the submissions advanced by learned counsel for the parties.

7. From the perusal, it is apparent that application under Section 125 Cr.P.C. has been allowed vide order dated 08.06.2022 with direction to applicant to pay arrears of maintenance in four quarterly installments as well as Rs. 10,000/- as monthly maintenance. Order dated 08.06.2022 has not been challenged in the present application. Family Court has passed order dated 21.02.2023 upon application under Section 128 Cr.P.C., issuing recovery warrant in terms of order dated 08.06.2022. Thereafter, Additional Principal Judge, Family Court has written letter dated 05.07.2023 to Deputy Inspector General(Establishment), Directorate General of Defence, New Delhi to ensure the recovery in 12 monthly installments of Rs. 31,750/- as well as Rs. 10,000/- as monthly maintenance from the salary account of the applicant.

8. I have also perused salary slip of the applicant annexed with the supplementary affidavit, according to which, gross salary of applicant is Rs. 57607/-. It appears that it is difficult for the applicant to make payment in terms of letter dated 05.07.2023. Under such facts of the case, applicant is directed to pay the full amount of arrears in 24 monthly installments of Rs. 15,875/- instead of 12 monthly installments of Rs. 31,750/- as well as Rs. 10,000/- as monthly maintenance in terms of letter dated 05.07.2023.

9. It is directed that applicant shall pay the first installment of arrears as well as monthly maintenance within three months from the date of passing of this order, failing which, this order would

lost its effect and Family Court shall be free to proceed against the applicant in accordance with law.

10. With the aforesaid observation, present application is **disposed of**.

Order Date :- 16.11.2023

ADY