

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9441 of 2023

Petitioner :- Ashok Kumar

Respondent :- Rinki

Counsel for Petitioner :- Giridhary Lal Choudhary, Prasoon Kumar, Sneh Madhur

Hon'ble Ram Manohar Narayan Mishra, J.

The instant petition under Article 227 of the Constitution of India has been filed by the petitioner, who is husband of respondent with following prayer:

(i) issue an order or direction to set aside the order dated 1.3.2021 passed in Misc. Petition No. 271 of 2019 under Section 125 Cr.P.C. as well as order dated 10.8.2023 passed in Misc. Petition no. 304 of 2021 passed in application u/s 125 (3) Cr.P.C. by the Principal Judge, Family Court, Sonbhadra.

(ii) issue an order or direction directing the respondent to comply the order dated 20.4.2023 passed by Additional Principal Judge, Family Court, in Misc. Petition No. 950 of 2019, under Section 9 of Hindu Marriage Act and to custody of the children may be given to the petitioner.

(iii) issue any other suitable order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Heard learned counsel for the petitioner and learned AGA for the State.

Learned counsel for the petitioner submitted that respondent filed a petition under section 125 Cr.P.C. against the petitioner, who is her husband. The said petition was registered as maintenance case no. 271 of 2019. An application seeking interim maintenance from opposite party was filed by the complainant before the Principal Judge, Family Court, Sonbhadra, which was partly allowed by learned Principal Judge vide order dated 1.3.2021 and the opposite party, who is present petitioner, was directed to pay Rs. 2,000/- as interim maintenance to the complainant on monthly basis, which is payable on 10th of each month and directed the opposite party to pay Rs. 3,000/- as cost of litigation as one time payment. Case was

fixed for evidence. The applicant has filed an application for execution of said interim order before the court below on 29.9.2021 wherein she has stated that opposite party has not complied with the order passed by the court regarding interim maintenance which is payable from the date of order dated 1.3.2021 alongwith cost of litigation and for that purposes necessary order has been passed against the opposite party. The learned court below on 10.8.2023 passed an order on application u/s 125(3) Cr.P.C. to the effect that interim maintenance order was passed by the court after giving opportunity to both side, however, said order dated 1.3.2021 has not been complied with by the opposite party till date and he has shown slackness towards compliance of court's order, consequently, opposite party is directed to file an undertaking of Rs. two lakh to the effect that he will deposit entire amount of interim maintenance as directed vide order dated 1.3.2021 by 29.7.2023 or pay total outstanding amount to the applicant, failing which the amount mentioned in undertaking shall be forfeited and same will be deposited in the account of State government after recovery from opposite party. The present petitioner feeling aggrieved by the two orders of court below filed present petition.

Learned counsel for the petitioner submitted that respondent no. 2 resides separately from her husband without sufficient cause. The petitioner is still ready to keep his wife and three minor children who are residing with her alongwith him. He filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal rights against the respondent no. 2, which was decided ex-parte by the court below in favour of the petitioner on 22.4.2023 and respondent no. 2 has been directed to associate with the petitioner at his place and fulfill her matrimonial obligations, however, respondent no. 2 has not complied with that order. The petitioner has provided means to respondent no. 2 to receive higher education and was having proper care of respondent no. 2 and her children so long as she was residing with him.

Per contra, learned AGA submitted that respondent no. 2 has made allegation against the petitioner that after her marriage, petitioner acquired job of sanitation worker and after that he began demanding a Maruti car in dowry and on non fulfillment of demand of dowry he used to harass and coerce the children born out of their wedlock. The respondent no. 2 has also stated in her application u/s 125 Cr.P.C. that she was forced to reside at her parental place alongwith three children due to highhandedness, coercion and torture meted out to her by her husband. This fact is

not denied by the petitioner that petitioner is engaged as sanitation worker at Panchayat Raj department and he is supposed to have earned sufficient to pay interim maintenance awarded by the court below in the impugned order. The factual submissions raised by the learned counsel for the petitioner are liable to be adjudicated by the court below while deciding the application u/s 125 Cr.P.C. on merits.

The object of grant of interim maintenance is to provide some interim measure for subsistence of applicant during pendency of application u/s 125 Cr.P.C; the provision of same has been made subsequently under Section 125(1)(2) Cr.P.C. The petitioner has not complied with the order of the court below in which meagre amount of maintenance Rs. 2,000/- only has been awarded to the respondent no. 2 who is residing at her parental place alongwith three minor children. The petitioner has filed present petition before this Court only to avoid payment of interim maintenance awarded against him which is payable to respondent no. 2. The petition is devoid of merit and is liable to be dismissed.

Considering the rival submissions of learned counsel for the parties as well as facts and circumstances of the case, the instant petition is dismissed.

Order Date :- 16.11.2023

Dhirendra/