

Court No. - 86

Case :- APPLICATION U/S 482 No. - 36172 of 2023

Applicant :- Firoz

Opposite Party :- State of U.P. and Another

**Counsel for Applicant :- Rajesh Kumar,Rajeev Kumar
Saxena**

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.
2. By means of this application under Section 482 Cr.P.C., the applicant has challenged the order dated 26.10.2021 passed by Principal Judge, Family Court, Agra in Maintenance Case No. 1132 of 2019 (Smt. Shamim Begam Vs. Firoz), under Section 125 CrPC, Police Station Sikandara, District Agra, by which application under Section 125 CrPC, filed by opposite party no.2, has been allowed and the applicant has been directed to pay a sum of Rs. 3,000/- per month to opposite party no.2 as maintenance from the date of filing of application, by the 10th day of every calendar month.
3. Learned counsel for the applicant has submitted that applicant is running a small barber shop and do not have adequate source of earning and thus, he is unable to provide the maintenance fixed by the court to his wife, as such, impugned order dated 26.10.2021 passed by the court below is bad in law being too excessive.
4. Learned counsel for the applicant has further submitted that apart from the instant case, opposite party no.2 has also filed a Complaint Case No. 802 of 2016 (Smt. Shamim Begam Vs. Firoz) under Section 12 of Domestic Violence Act, in which, an order dated 30.05.2017 has also been passed by the court below directing the applicant to pay a sum of Rs.4,000/- per month to the opposite party no.2 as an interim maintenance by the 10th day of every calendar month and therefore, a direction be given to the court below to adjust the amount of Rs.3,000/-, which has been directed to be paid by the applicant to the opposite party no.2 pursuant to the impugned order dated 26.10.2021.

5. From perusal of the record, it is evident that opposite party no.2 is the wife of the applicant, who is an able bodied person. An able-bodied person has to be presumed to be capable of earning sufficient money so as to be reasonably able to maintain his wife and he cannot be heard to say that he is not in a position to earn enough to be able to maintain her according to the family standard. No cogent grounds have been canvassed as to why such able bodied person is unable for reasons beyond his control, to earn enough to discharge his legal obligation to maintain his wife.

6. Hon'ble Apex Court in the case of ***Shamima Farooqui Vs. Shahid Khan, reported in (2015) 5 SCC 705*** has observed as under:-

"It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

7. In view of settled legal position enumerated above, impugned order dated 26.10.2021 passed by Principal Judge, Family Court, Agra, is just, proper and legal and do not suffer from any illegality, infirmity or apparent error.

8. So far as the prayer for adjusting the amount being paid by the applicant under the Domestic Violence Act is concerned, the applicant has already filed an application

dated 28.04.2023 before the court below, which may be pressed before the court below, who shall pass appropriate orders on the said application in accordance with law, however, on the said ground, neither the impugned order dated 26.10.2021 nor the entire recovery proceedings based on the application under Section 125(3) CrPC can be quashed.

9. With the aforesaid observations, the present application under Section 482 CrPC stands **dismissed**.

Order Date :- 2.11.2023

Nadim