

Court No. - 89

Case :- APPLICATION U/S 482 No. - 35151 of 2023

Applicant :- Sandeep Yadav

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

Counsel for Applicant :- R.B.Pal, Umesh Kumar Pal

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the ex parte order dated 07.04.2021 passed by Addl. Principal Judge, Family Court, Court no.3, Deoria in Maintenance Case No.643 of 2018, U/s 125 Cr.P.C., P.S. Salempur, District Deoria as well as recovery warrant dated 02.06.2022 passed in Execution Case (Ezra Case) No.428 of 2021, U/s 128 Cr.P.C., PS Mail, District Deoria.
3. Learned counsel for the applicant submitted that applicant has challenged the ex parte order dated 07.04.2021 under Section 125 Cr.P.C. Both the parties have compromised to live separately and have filed divorce petition under Section 13B of Hindu Marriage Act, 1955. As per compromise applicant had paid Rs.1,50,000/- to opposite party No.2 (wife) but opposite party no.2 is not participating in the proceedings under Section 13B of Hindu Marriage Act and proceeding U/s 125 Cr.P.C. Applicant has moved application U/s 128 Cr.P.C. for execution of *ex party* order.
4. Considering the argument raised by applicant's counsel and perused the entire record, it is evident that application U/s 125 Cr.P.C. of opposite party no.2 has been allowed vide order dated 07.04.2021 which is *ex party* as applicant has not appeared in the case and trial court has given finding that applicant is residing in Bombay doing private job and earning Rs.30,000/- per month. The Additional Principal Judge, Family Court, Deoria has fixed Rs.5,000/- per month as maintenance amount. As per record, it appears that applicant has not paid single amount as per order passed in 125 Cr.P.C. proceedings. Applicant has remedy under the provision to move an application for recall of the *ex parte* order. If applicant moves an application for recall of *ex parte* order then the Addl. Principal Judge, Family Court, Deoria shall consider and decide his application expeditiously, in accordance with law.
5. With the aforesaid directions, this application under Section 482 Cr.P.C. stands **disposed of**.

Order Date :- 31.10.2023

Nitin Verma