

Court No. - 92

Case :- APPLICATION U/S 482 No. - 35848 of 2023

Applicant :- Sirnam Singh

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Ved Prakash Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Ved Prakash Ojha, learned counsel for the applicant and Shri Arvind Kumar, learned A.G.A. for the State.

2. The instant application under section 482 Cr.P.C. has been filed seeking quashing of the order dated 3.8.2023 passed by the learned district and Sessions Judge Lalitpur in Criminal Appeal No. 29 of 2022 (Sirnam Singh Vs. State of U.P. and another) and the order dated 4.5.2022 passed by the Judicial Magistrate/Civil Judge (JD) (FTC) District Lalitpur in Case No. 4 of 2019 (Smt. Kallu Bai Vs. Sirnam and others) under section 12 of Domestic Violence Act.

3. Learned counsel for the applicant submits that the opposite party no. 2 was already awarded a maintenance at the rate of Rs.1500/- per month vide order dated 4.9.2012 passed by the Judicial Magistrate Ist, Teekamgarh, Madhya Pradesh in the proceedings under section 125 Cr.P.C. and subsequently on an application under section 12 of the Domestic Violence Act, the learned Civil Judge (JD) (FTC)/ Judicial Magistrate, Lalitpur has awarded further maintenance of Rs.2000/- per month to the opposite party no. 2 vide order dated 4.5.2022. Against the said order the applicant had filed the criminal appeal No. 29 of 2022 which was dismissed vide impugned order dated 3.8.2023. Learned counsel for the applicant further submits that once the maintenance under section 125 Cr.P.C. has already been awarded to the opposite party no. 2, another order for maintenance cannot be granted in addition to the said maintenance amount already awarded by the competent court under section 125 Cr.P.C. Therefore he has prayed for quashing of the order dated 4.5.2022 and 3.8.2022 passed by the learned Magistrate and the Sessions Judge respectively.

4. On the other hand, learned A.G.A. for the State submits that the opposite party no. 2 is now aged about 53 years and has no source of income and in the year 2012 maintenance of Rs.1500/- was granted by the competent court under section 125 Cr.P.C. However, the same was not paid by the applicant herein for

substantial period of time, therefore, she had to file an application under section 128 Cr.P.C. and on such application being filed in the year 2016 the applicant had paid Rs.1,88,000/- to the opposite party no. 2, which was the amount due till the filing of application under section 128 Cr.P.C. by the opposite party no. 2. However, there is no proof that subsequent thereto the applicant is paying the said maintenance amount to the opposite party no. 2. It is further submitted that the amount awarded was on a very lower side which is not sufficient for a lady of 53 years of age to maintain herself, therefore, the learned Judicial Magistrate, Lalitpur having considered the earlier order granting maintenance under section 125 Cr.P.C. has passed this order granted maintenance of Rs.2000/- from the date of the order as interim maintenance under section 12 of the Domestic Violence Act. Therefore, there is no illegality in the impugned order of Judicial Magistrate, Lalitpur as the total amount of maintenance as of now comes to Rs.3,500/- per month which is still on lower side for a lady of 53 years of age to maintain herself, who has no other source of income.

5. Considering the rival submissions of the learned counsel for the parties the court has carefully gone through the records and from perusal of the record it appears that though on 4.9.2012 an order awarding maintenance of Rs.1500/- to the opposite party no. 2 was passed, but the same has not been paid by the applicant for a substantial period and only on an application being filed by the opposite party no. 2 under section 128 Cr.P.C., the applicant has paid Rs.1,88,000/- to the opposite party no. 2 in the year 2022. However, at present the applicant is paying the aforesaid maintenance amount is not reflected from the record. Therefore, by the order dated 4.5.2023 the learned Magistrate taking into consideration of the earlier order granting maintenance under section 125 Cr.P.C., granted an interim maintenance of Rs.2000/- under section 12 of the Domestic Violence Act, which comes to Rs.3,500/- per month, which is still a meager amount for a lady of 53 years of age to maintain herself, as she has no other source of income.

6. Therefore, considering the peculiar facts and circumstances of the present case no case for interference in the instant application is made out. The instant application is devoid of merit and is hereby **dismissed**.

Order Date :- 29.11.2023

o.k.