

Court No. - 91

Case :- APPLICATION U/S 482 No. - 37452 of 2023

Applicant :- Som Prakash

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

Counsel for Applicant :- Ashok Kumar Singh Bais

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicant and learned AGA for the State and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed to quash the impugned order dated 24.08.2023 passed by Additional Principal Judge, Family Court, Saharanpur in Case No. 1721 of 2023 (Som Prakash Vs. Smt. Sonia and another), under Section 126(2) Cr.P.C. arising out of proceeding under section 125 Cr.P.C. bearing Case No.1514/2021 (Smt. Sonia and another Vs. Som Prakash), Police Station Sarsawa, District- Saharanpur by which Rs.35,000/- as fine has been imposed by the trial court.

3. The brief facts of the case given in the said application is that opposite party no. 2 has filed an application under Section 125 Cr.P.C. with the prayer that she is unable to maintain herself and applicant be directed to pay maintenance allowance to her. The said application was ex-parte allowed by the Additional Principal Judge, Family Court vide order dated 14.02.2023 and applicant was directed to pay a sum of Rs. 5,000/- per month to the opposite party no. 2 and Rs. 5,000/- per month to her son. Against the said order dated 14.02.2023, the applicant moved an application under Section 126(2) Cr.P.C. stating therein that he could not get any information about the pendency of the application u/s 125 Cr.P.C. He has not deliberately avoided the proceeding under Section 125 Cr.P.C. and since the proceeding has been decided ex-parte, as such the same may be decided after hearing him by setting aside the exparte order dated 14.02.2023. The said application has been allowed and the order dated 14.02.2023 has been set-aside subject to the condition that applicant pays a sum of Rs. 35,000/- to opposite party No. 2.

4. Learned counsel for the applicant has submitted that the amount imposed upon the applicant is too excessive and illegally imposed,

as such is bad in the eyes of law.

5. Per contra, learned AGA has opposed the prayer and has drawn the attention of the Court to the proviso of Section 126(2) Cr.P.C., which is as under :-

"Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper."

6. Therefore in view of the specific provision contained in the proviso of Section 126(2) Cr.P.C., amount of Rs. 35,000/- has rightly been imposed upon the applicant and there is no illegality or infirmity in the said order.

7. It is further submitted that despite specific order passed on 14.02.2023 directing payment of maintenance to the opposite party No. 2 and his minor child from the date of application, not a single penny has been paid to them by the applicant, as such they are leading the life of a destitute. It is further submitted that till date a sum of Rs. 35,000/- stands due to the applicant.

8. Having considered the rival submissions made by the learned counsel for the parties and taking into consideration the proviso of Section 126(2) Cr.P.C. which clearly provides that any ex-parte order so made be set aside for good cause shown on an application but subject to such terms including terms as to payment of costs to the opposite party as the Court may think just and proper, the amount imposed by the court below in the backdrop of the aforesaid facts and circumstances is just, proper and legal and do not call for any interference by this Court at this stage.

9. The present application u/s 482 Cr.P.C. is devoid of merit and is accordingly, **dismissed**.

Order Date :- 3.11.2023

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