

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37668 of 2023

Applicant :- Sarvar Ali

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

Counsel for Applicant :- Pawan Kumar, Satish Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Satish Kumar Sharma, learned counsel for the applicant and Sri Akhilesh Kumar Srivastava, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of the order dated 01.04.2023, passed by the Additional Principal Judge, Family Court No. 1, Maharajganj, whereby the application u/S 125 Cr.P.C., filed by the opposite party nos. 2 and 3 has been allowed by the learned Family Court and the opposite party no.2 has been granted maintenance at the rate of Rs. 4,000/- per month and the opposite party no.3 has been granted Rs. 2,000 per month being the wife and daughter of the applicant herein respectively.

3. Learned counsel for the applicant submits that though the opposite party no.2 is the wife but she has lived with the applicant only for 10 days and thereafter she has gone away and the daughter of the opposite party no.2 was born after eleven months from the date of marriage. Therefore, he has denied the paternity of the daughter. Therefore, the learned counsel for the applicant has prayed for quashing of the said order, granting maintenance to the opposite party nos. 2 and 3.

4. Learned counsel for the State submits that in the instant case, it is undisputed that the opposite party no.2 is the wife of the applicant herein and the opposite party no.3 is the daughter of the opposite party no.2 who was born during the subsistence of marriage between the parties. Therefore, there is presumption in favour of the legitimacy of the child born out of the marriage. Therefore, it can not be said that the opposite party no.3 is not the daughter of the opposite party no.2 prima facie. In the absence of any evidence led by the applicant herein during the proceedings before the learned Family Court, therefore, there is no illegality in the impugned order passed by the learned Family Court, awarding the maintenance which is nominal in nature. Therefore, learned counsel for the State has submitted

that no interference is called by this Court in the impugned order.

5. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case, particularly, the impugned order dated 01.04.2023, passed by the learned Family Court. In the impugned order, the Family Court has given categorical finding that the opposite party no.2 is the wife of the applicant herein and the opposite party no.3 is the daughter of the applicant herein. In support of his submissions that the opposite party no.3 was born after eleven months of the marriage, therefore, the opposite party no.3 is not the daughter of the applicant herein, no evidence has been led by the applicant herein before the Family Court.

6. Therefore, having regard to the presumption in regard to the legitimacy of the child born during the subsistence of marriage, it can't be said that the opposite party no.3 is not the daughter of the applicant herein. Therefore, the opposite party nos. 2 and 3 both are entitled for maintenance in terms of Section 125 Cr.P.C., and since the amount of maintenance awarded by the Family Court is very nominal in nature, therefore, this Court do not find it appropriate to interfere with the impugned order and the instant application is devoid of merits and is hereby ***dismissed***.

Order Date :- 30.10.2023

Shubham Arya