

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37751 of 2023

Applicant :- Sunny Baweja

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

Counsel for Applicant :- Gyanendra Singh, Diwakar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Shri Deepak Dubey holding brief of Shri Diwakar Tiwari assisted by Shri Gyanendra Singh for the applicant and Shri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings including the order dated 21.9.2023 passed by the learned Principal Judge, Family Court, Kanpur Nagar in Case No. 1741 of 2023 (Smt. Manvinder Kaur Vs. Sunny Baweja) under section 125(3) Cr.P.C. police station Govind Nagar District Kanpur Nagar pending in the court of Principal Judge, Family Court, Kanpur Nagar.

3. Learned counsel for the applicant submits that on an application under section 125 Cr.P.C. moved by the opposite party no. 2 whereby the opposite party no. 2 sought maintenance, the learned Principal Judge, Family Court has awarded the compensation at the rate of Rs.10,000/- to the opposite party no. 2 and Rs.5000/- to the daughter of opposite party no. 2 and the applicant herein by the order dated 24.1.2020. Against the said order, the applicant has filed an application on 6.1.2023 under section 127(1) Cr.P.C. for alteration of the amount awarded, which is pending before the trial court. The opposite party no. 2 has also filed an application under section 125(3) Cr.P.C. for recovery of the maintenance to be paid to her in terms of the order dated 24.1.2020 on which the Principal Judge, Family Court on 21.9.2023 has issued the recovery warrant against the applicant herein. Learned counsel for the applicant submits that since he has filed an application under section 127(1) Cr.P.C., therefore, the recovery warrant against the applicant be quashed till the final disposal of his application under section 127(1) Cr.P.C.

4. Per contra, learned A.G.A. for the State submits that the order dated 24.1.2020 has not been challenged by anyone in any court, therefore, the same is binding upon the applicant herein and since the applicant herein deliberately defaulted in making the payment

and there are arrears, therefore, the application under section 125(3) Cr.P.C. has been filed by the opposite party no. 2 against the applicant and in pursuance thereof recovery warrant issued against the applicant. So far as the application under section 127(1) Cr.P.C. filed by the applicant is concerned, the same is still pending and no order has yet been passed, therefore the applicant is liable to pay the arrears of maintenance to the opposite party no. 2 as directed vide order dated 24.1.2020.

5. Having heard rival submissions of the learned counsel for the parties this has carefully gone through the record of the case and from perusal of the record it is apparent that on an application under section 125 Cr.P.C. filed by the opposite party no. 2 the maintenance was awarded to the opposite party no. 2 and her daughter at the rate of Rs.10,000/- and Rs.5,000/- per month respectively and since there are arrears and the applicant has not paid the said arrears in terms of the order dated 24.1.2020, the opposite party no. 2 had filed an application under section 125(3) Cr.P.C. In pursuance of this recovery warrant has been issued against the applicant. In the meanwhile the applicant herein has filed an application under section 127(1) Cr.P.C. seeking alteration of the maintenance amount having been awarded to the opposite party no. 2 and her daughter which is pending. Since the order dated 24.1.2020 has not been challenged anywhere and has not been altered by any competent court, it is not open for the applicant herein to disregard the said order dated 24.1.2020 and not to make the payment of maintenance, as directed by the competent court. Therefore, the learned Magistrate has rightly issued recovery warrant against the applicant on the application under section 125(3) Cr.P.C. vide order dated 24.1.2020 and the applicant is liable to pay the arrears of maintenance to the opposite party no. 2 and her daughter.

5. In view of the aforesaid, the instant application is devoid of merit and is hereby **dismissed**.

6. The Principal Judge, Family Court, Kanpur Nagar is directed to hear the applicant on his application under section 127(1) Cr.P.C. only after the clearance of the arrears of maintenance to be paid by the applicant herein upto date.

Order Date :- 2.12.2023

o.k.