

Court No. - 86

Case :- APPLICATION U/S 482 No. - 38440 of 2023

Applicant :- Brijesh Kumar

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

Counsel for Applicant :- Vikrant Rana

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.
2. By means of this application under Section 482 CrPC, applicant has challenged the order dated 21.08.2023 passed by Principal Judge, Family Court, Ghaziabad in Case No. 533 of 2022 (Smt. Pooja Srivastava and Another Vs. Brijesh Kumar), under Section 125 CrPC, Police Station Modi Nagar, District Ghaziabad, by which application under Section 125 CrPC, filed by opposite party no.2, has been partly allowed and the applicant has been directed to pay a sum of Rs. 3,000/- per month to opposite party no.2 and Rs. 4,000/- per month to opposite party no.3 as an interim maintenance from the date of filing of the application, by the 10th day of every calendar month.
3. Learned counsel for the applicant has submitted that the applicant is a driver and his salary is Rs.9,000/- per month, therefore, he is unable to provide the interim maintenance of Rs.7,000/- per month, fixed by the court below to his wife and his minor daughter, as such, impugned order dated 21.08.2023 passed by the court below is bad in law being too excessive.
4. From perusal of the record, it is evident that opposite party no.2 is the wife and opposite party no.3 is the minor daughter of the applicant, who is an able bodied person. An able-bodied person has to be presumed to be capable of earning sufficient money so as to be reasonably able to maintain his wife and his minor daughter and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. No cogent grounds have been canvassed as to why such able bodied person is unable for reasons beyond his control, to earn enough to discharge his legal obligation to maintain his

wife and minor daughter.

5. Hon'ble Apex Court in the case of ***Shamima Farooqui Vs. Shahid Khan, reported in (2015) 5 SCC 705*** has observed as under:-

"It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

6. In view of settled legal position, enumerated above and that the question of total monthly earnings of the applicant cannot be decided in exercise of power under Section 482 CrPC at this stage, when the evidence is yet to come, as such, the impugned order dated 21.08.2023 passed by Principal Judge, Family Court, Ghaziabad, is just, proper and legal and do not suffer from any illegality or infirmity or apparent error.

7. This application under Section 482 CrPC is devoid of merit and is accordingly **dismissed**.

Order Date :- 22.11.2023

Nadim