

Court No. - 89

Case :- APPLICATION U/S 482 No. - 38589 of 2023

Applicant :- Ram Asare

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

Counsel for Applicant :- Abhishek Mishra, Dinesh Kumar Misra

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to allow this Application u/s 482 Cr.P.C. and direct the court below not to release any amount from the applicant in pursuance of the order dated 10.02.2020 passed by the Principal Judge, Family Court, Varanasi in Case No.209 of 2015 (Urmila vs. Ram Asare), under section 125 Cr.P.C., Police Station Bholepur, District Varanasi by which court below has directed the applicant to pay Rs.1500/- per month as interim maintenance to the opposite party no.2 from the date of application dated 25.03.2019. Further prayer has been made to decide the recall application dated 10.03.2022 filed by the applicant to recall the order dated 10.02.2020 passed by the Principal Judge, Family court, Varanasi.
3. Learned counsel for the applicant submits that opposite party no.2 has initiated proceeding under section 125 Cr.P.C. and applicant could not appear in proceeding under section 125 Cr.P.C. Thereafter, the Principal Judge, Family Court on 10.02.2020 allowed the interim maintenance application of the applicant. Learned counsel for the applicant next submits that he has moved application for recall of the ex-parte order, which was passed on 22.04.2016. The application was moved on 31.02.2017. Learned counsel for the applicant next submits that applicant moved application for recalling the order dated 06.05.2023 is pending.
4. Learned A.G.A. has vehemently opposed the contention raised by learned counsel for the applicant.
5. Considered the arguments raised by learned counsel for the applicant and perused the entire records. It is evident that applicant has not filed any application for recalling the order dated 10.02.2020. Learned counsel for the applicant has placed reliance over application dated 31.10.2017, which is filed as Annexure No.8 to the affidavit, is moved for recalling the ex-parte order dated 22.04.2016 and application moved on 06.05.2023 is also an affidavit is not supported by application to set aside the order dated 10.02.2020. In affidavit, there is no averment in regard to set aside the order dated 10.02.2020. However, submissions raised by learned by learned counsel for the applicant are disputed question of facts

and sitting under 482 Cr.P.C. jurisdiction, this Court has no power to examine the facts.

6. In view of the above, in the light of judgment of the Apex Court in the matters of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

7. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

Order Date :- 17.10.2023

SKD