

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38787 of 2023

Applicant :- Zahid

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

Counsel for Applicant :- Amit Krishna, Mihir Ghosh Roy

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State- opposite party and perused the record.

2. This application under Section 482 Cr.P.C. has been filed by the applicant with the prayer to quash the recovery warrant dt.27.01.2023 issued by Additional Principal Judge, Family Court No.1, Muzaffar Nagar passed in Case No.470/11 of 2022 (Smt. Aasma Vs. Zahid), U/s 128 Cr.P.C. arising out of Case No.394/11 of 2017, U/s 125 Cr.P.C., Police Station Kotwali Nagar, District Muzaffar Nagar and further prayer to stay the further proceedings of the aforesaid case has been made.

3. It is submitted by learned counsel for the applicant that on the application moved by opposite party no.2 under section 125 Cr.P.C., ex-parte order dated 21.03.2020 granting maintenance was passed by the Additional Principal Judge, Family Court No.1, Muzaffar Nagar against which application under section 126(2) Cr.P.C. was filed which is still pending but the Principal Judge, Family Court passed order on application moved by the opposite party no.2, under section 128 Cr.P.C. which is abuse of process of court.

4. Learned A.G.A. opposed the prayer and contended that before passing any order on the application under section 128 Cr.P.C., the application moved by the applicant under section 126(2) Cr.P.C. should have been considered and decided.

5. In view of the above, as the application under section 126(2) Cr.P.C. against the ex-parte order passed is still pending consideration, therefore, any further proceeding regarding execution/ alteration of the maintenance order is uncalled for.

6. However, this application stands **disposed of** with the direction

that before proceeding any further, the court concerned shall decide the application moved by the applicant under section 126(2) Cr.P.C., as expeditiously, as possible, in accordance with law.

Order Date :- 18.10.2023

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