

Court No. - 90

Case :- APPLICATION U/S 482 No. - 38892 of 2023

Applicant :- Riyazuddin

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mohd. Samiuzzaman Khan, Obaidur Rahman Khan

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicant and the learned A.G.A.
2. The applicant has invoked the inherent jurisdiction of this Court assailing the order dated 25.09.2023 whereby recovery warrant has been ordered to be issued against the present applicant in pursuance of the ex parte order dated 09.09.2021 passed by the Additional Principal Judge, Family Court, Ballia in Case No. 722 of 2019 under Section 125 Cr.P.C.
3. Facts culled out from the record are that marriage of Jarina (respondent no. 2) was solemnized according to muslim rites and rituals, however, at later stage due to some misunderstanding both the parties were separated. Respondent no.2 along with two children have moved an application dated 17.12.2019 for maintenance under Section 125 Cr.P.C. Said application was ex parte allowed vide order dated 09.09.2021 granting maintenance to wife to the tune of Rs.3000/- per mensem and both children to the tune of Rs.2000/- each per mensem which was directed to be paid on 10th day of each month. Respondent no. 2 has moved an application dated 17.12.2019 under Section 125(3) Cr.P.C. for execution of the ex parte order dated 09.09.2021. While the present applicant came to know about the pendency of the application under Section 125 (3) Cr.P.C., he has moved an application dated 22.03.2023 under Section 126(2) Cr.P.C. to recall the ex parte order dated 09.09.2021 passed in proceeding under Section 125 Cr.P.C. During pendency of the applicant under Section 126(2) Cr.P.C., learned Family Court has passed the order impugned dated 25.09.2023 issuing the recovery warrant against the present applicant, which is under challenge before this Court.
4. It is submitted by learned counsel for the applicant that case for maintenance under Section 125 Cr.P.C. has been filed on behalf of

respondent no. 2 by concealing the factum of divorce (Talaq) took place between the parties. In this respect a memorandum of understanding dated 22.11.2014 (Annexure-1) was got executed between the parties wherein respondent no. 2 has admitted the divorce (Talaq) and agreed to keep both children with her. It is further submitted that respondent no. 2 is deliberately delaying the proceeding under Section 126(2) Cr.P.C. just to exert pressure upon the applicant intending to extract money pursuant to the ex parte order dated 09.09.2021. It is further submitted that in light of the memorandum of understanding dated 22.11.2014 made by both the parties (present applicant and respondent no. 2), there is no liability entrust upon the present applicant to give maintenance.

5. Having considered the submissions as raised by learned counsel for the applicant and perusal of record, I am of the view that no useful purpose would be served to keep the instant application pending, therefore, this Court deems it appropriate to dispose of the present application, without entering into the merits of the case as mentioned in the application with a direction to the Principal Judge, Family Court, Ballia to decide the application filed under Section 126(2) Cr.P.C. dated 22.03.2023, expeditiously, preferably within a period of one month from the date of production of certified copy of this order, which shall be filed before the court concerned within a period of one week from today.

6. It is expected that the matter should be decided by a reasoned and speaking order, in accordance with law, after affording opportunity of hearing to the parties concerned without granting unnecessary adjournments to either of the parties.

7. For a period of forty (40) days or till the decision of the application under Section 126 Cr.P.C. dated 22.03.2023 moved on behalf of the present applicant, whichever is earlier, recovery warrant issued in pursuance of the ex parte order dated 09.09.2021 shall remain stayed.

8. With the aforesaid observation/direction, the instant application is finally **disposed off**.

Order Date :- 31.10.2023

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