

Court No. - 91

Case :- APPLICATION U/S 482 No. - 39384 of 2023

Applicant :- Rinku @ Rinku Shrivastava

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Dinesh Kumar Sony

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicants with the prayer to quash the order dated 23.08.2023, passed by Principal Judge, Family Court, Mahoba, in Case No. 73 of 2020 (Old Case No. 53 of 2017) (Smt. Ritu vs. Rinku), in the proceeding under Section 128 Cr.P.C. issuing recovery and non-bailable warrant against the applicant and order dated 18.11.2019, passed by Additional Session Judge (Fast Track Court-2016), Mahoba, as well as entire proceeding of the aforesaid case.

Submission of learned counsel for the applicants is that a divorce petition under Section 13-B of Hindu Marriage Act and proceeding under Section 128 Cr.P.C. between the same parties are pending before the Principal Judge, Family Court, Mahoba. In both the cases, the date 23.08.2023 was fixed. On that date, the case of 13B Hindu Marriage Act was adjourned and 23.10.2023 was fixed and in Case under Section 128 Cr.P.C., because of absent of opposite party no. 2, order for recovery warrant was passed and N.B.W. was issued.

The submission of learned counsel for the applicant is that it was in the fitness of the case as divorce petition under Section 13B of Hindu Marriage Act was pending, there was no necessity to pass any order for recovery warrant. Further more N.B.W. has been issued, which is against the law as in the proceeding under Section 128 Cr.P.C., no offence is involved in the case at the most the learned court below should have passed order for warrant of arrest. The manner in which the proceeding under Section 128 Cr.P.C which has been carried out against the applicant is abuse of the process of the Court. As such, the entire criminal proceeding against the applicant may be quashed.

Per contra, learned AGA opposed the prayer of the applicant but cannot dispute the aforesaid fact.

Looking to the facts and circumstances of the case and without going into the merits of the case as of now, the orders dated 23.08.2023 is hereby set-aside.

The present application u/s 482 Cr.P.C. is allowed to this extent.

The matter is remanded back to the trial court concerned to pass fresh order in accordance with law within a period of four weeks from the date of production of a certified copy of this order.

Order Date :- 2.11.2023

v.k.updh.