

Court No. - 91

Case :- APPLICATION U/S 482 No. - 43150 of 2023

Applicant :- Praveen Kumar Bharti

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

Counsel for Applicant :- Mahendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

Heard learned counsel for the applicant and the learned AGA appearing for the State. u/s 125 (3) Cr.P.C.

The present application has been filed by the applicant under Section 482 Cr.P.C. with the prayer to quash the entire proceedings of application u/s 125(3) Cr.P.C. being Misc.Case No.2239 of 2022, Smt. Priyanka and others vs. Praveen Kumar Bharti as well as set aside the order dated 6.11.2023, passed by Additional Principal Judge, Family Court No.4, Kanpur Nagar in application u/s 125 (3) Cr.P.C. in Misc.Case No.2239 of 2022, Smt. Priyanka and others vs. Praveen Kumar Bharti, arising out of original case No.878 of 2021, Smt. Priyanka and others vs. Praveen Kumar Bharti.

It is submitted by learned counsel for the applicant that an ex-parte order for maintenance u/s 125 Cr.P.C. has been obtained by the opposite party no.2 against the applicant. The applicant has moved an application u/s 126 (2) Cr.P.C. for setting aside the aforesaid exparte order, which is still pending before the court concerned but the court concerned is proceeding with the application filed by the opposite party no.2 for execution of exparte order passed u/s 125 (3) Cr.P.C. The main submission of learned counsel is that before proceeding with the application u/s 125 (3) Cr.P.C. for execution the application of the applicant u/s 126 (2) Cr.P.C. should have been heard and decided. The manner, in which, the proceeding is being carried out is nothing but an abuse of the process of court.

Learned A.G.A. opposed the prayer but accepted that before proceeding with the application u/s 125 (3) Cr.P.C., the application moved by the applicant u/s 126 (2) Cr.P.C. should have been heard and decided first.

In view of the above, application u/s 482 Cr.P.C. is disposed of

with the direction to the court concerned that it should first hear and decide the application moved by the applicant u/s 126 (2) Cr.P.C. for setting aside of the ex-parte order passed by the court concerned and then proceed with application u/s 125 (3) Cr.P.C.

Order Date :- 24.11.2023

m.a.