

Court No. - 86

Case :- APPLICATION U/S 482 No. - 43149 of 2023

Applicant :- Parag Jatariya

Opposite Party :- State Of U.P.And 2 Others

Counsel for Applicant :- Raj Kumar Sharma,Ajit Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed against the order dated 21.10.2023 passed by Principal Judge, Family Court, Jhansi in Misc. Case No. 404 of 2023 (Parag Jatariya Vs. Smt. Sandhya Sodhiya and another), by which the applicant's application under Section 126(2) Cr.P.C. has been allowed subject to the condition that the applicant shall pay a sum of Rs.6,000/- per month to his wife-opposite party no.2 and a sum of Rs.3,000/- per month to his minor son-opposite party no.3 with effect from 17.01.2022.

3. Brief facts of the case giving rise to the instant application are that opposite party no.2 is the wife and opposite party no.3 is the minor son of the applicant and they had filed an application under Section 125 Cr.P.C. on 29.01.2020 with the prayer that she along with her minor son are unable to maintain themselves and as such, the applicant be directed to pay maintenance allowance to them.

4. The said application was ex-parte allowed by the Principal

Judge, Family Court, Jhansi vide order dated 10.04.2023 and the applicant was directed to pay a sum of Rs.7,000/- per month to opposite party no.2 Smt. Sandhya Sodhiya and Rs.3,000/- per month to opposite party no.3 Aviraj Jatariya from the date of application i.e. 19.01.2020.

5. Against the said order dated 10.04.2023, the applicant moved an application under Section 126(2) Cr.P.C. on 08.05.2023 stating therein that applicant is the resident of Bhopal, Madhya Pradesh, which is quite a distance from Jhansi, Uttar Pradesh and as such, he was unable to do effective *pairvi* in the said case and when, he had put his appearance on 17.01.2022 before the court below, the court concerned thereafter remained vacant, as such, he could not appear before the court and the said proceedings has been decided ex-parte without giving him any opportunity of hearing, as such, the ex-parte order dated 10.04.2023 be recalled and Original Case No.67 of 2020 (Parag Jatariya Vs. Smt. Sandhya Sodhiya and Another) be restored to its original number and be heard again so that he may be able to adduce his evidence.

6. The said application has been allowed by the court below vide order dated 21.10.2023 and the order dated 10.04.2023 has been set aside subject to the condition that the applicant shall pay a sum of Rs.6,000/- per month to his wife-opposite party no.2 and Rs.3,000/- per month to his minor son-opposite party no.3 with effect from 17.01.2022, the date, he had put in appearance in the instant case.

7. Learned counsel for the applicant has submitted that the condition imposed upon the applicant for recalling the order

dated 10.04.2023 is too harsh and illegally imposed, as such, is bad in the eyes of law.

8. Per contra, learned AGA has opposed the said prayer and has drawn the attention of the Court to the proviso of Section 126(2) Cr.P.C., which reads as under :-

"Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex-parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper."

9. Learned AGA has further submitted that in the instant case, an application under Section 125 CrPC was filed by the opposite party no.2 on 29.01.2020. On the basis of the said application, notices were issued to the applicant to appear before the court below and file his objection, if any. However, even after repeated notices been sent to the applicant through registered post to put his appearance, he did not turn up to contest the said proceedings under Section 125 CrPC, ultimately a publication was made in the Newspaper on 30.07.2021, on the basis of which, the service of notice was deemed to be sufficient on the applicant, however even after publication in the Newspaper, the applicant did not appear to contest the said proceedings, as such, the order dated 06.09.2021 was passed for ex-

parte proceedings against the applicant. Ultimately, in the instant case on 17.01.2022, when the case was fixed for ex-parte hearing, the applicant, for the first time, appeared before the court below and filed an application for recalling the order for ex-parte hearing and proceeding with the case, however, after filing of an application for recalling ex-parte hearing order, the applicant again did not appear at all, though repeated dates were fixed. Ultimately on 20.03.2023, after hearing the opposite party no.2, the court below rejected the applicant's application for exemption for appearance and the ex-parte order dated 10.04.2023 was passed. Thus, it is evident that the applicant deliberately did not appear before the court below and kept on lingering the proceedings for more than three years and only after passing of ex-parte order dated 10.04.2023, appeared before the court below and filed an application under Section 126(2) CrPC for recalling the order dated 10.04.2023.

10. The court below, after considering the submissions of the applicant on the application filed under Section 126(2) CrPC, allowed the said application, noting therein the contention of learned counsel for the applicant that the court remained vacant with effect from 17.01.2022 to 03.02.2023, is patently false. During this period, the opposite party no.2 continuously appeared before the court below but the applicant did not appear at all, though his application for recalling the order to proceed ex-parte was repeatedly listed for hearing but the applicant did not appear at all and only when the case was fixed on 17.01.2022, the applicant appeared before the court below and moved an application for recalling the ex-parte order.

11. Thus, it is evident that from the very beginning, the applicant has been deliberately lingering-on the said proceedings and till date, has not paid a single penny to his wife-opposite party no.2 and his minor son-opposite party no.3, who are living as a destitute and facing acute financial constraints. In the backdrop of which, the impugned order dated 21.10.2023 passed by the court below is just, proper and legal and do not call for any interference.

12. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the proviso of Section 126(2) Cr.P.C., which clearly provides that any ex-parte order of maintenance may be set aside only for a good cause shown on an application subject to such terms including terms as to the payment of costs to the opposite party as the Magistrate may think just and proper.

13. In the instant case, the opposite party no.2 had moved an application for maintenance on 29.01.2020, however, even after lapse of more than three years and ten months, not a single penny has been paid by the applicant to his wife-opposite party no.2 and to his minor son-opposite party no.3 and as such, in the backdrop of the said facts and circumstances of the case, the impugned order dated 21.10.2023 passed by the court below is just, proper and legal and do not call for any interference by this Court in exercise of powers under Section 482 CrPC.

14. The instant application under Section 482 Cr.P.C. is therefore devoid of merit and is accordingly **dismissed**.

Order Date :- 8.12.2023/Nadim