

Court No. - 93

Case :- APPLICATION U/S 482 No. - 45565 of 2023

Applicant :- Lavkush Rastogi

Opposite Party :- State Of U.P. And2 Others

Counsel for Applicant :- Mir Sayed

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Lavkush Rastogi-Applicant has approached this Court through this application under Section 482 Code of Criminal Procedure seeking quashing of the impugned order dated 2.12.2023 passed by Gram Nyayalay, Pindra, Varanasi in Case No. 2967 of 2013, titled *Smt. Madhu Rastogi Vs. Jagdish Rastogi and others*, whereby the court has issued non bailable warrants against him pursuant to the recovery warrant earlier issued for clearance of the maintenance amount awarded in favour of opposite party no.2, under Section 12 Protection of Women from Domestic Violence Act, 2005.

Learned counsel for applicant submits that claimant before the Magistrate is step-mother of the applicant, who brought her claim during the life time of the applicant's father and during the pendency of her claim, the applicant's father died, but the court has burdened the applicant to pay maintenance to opposite party no.2 alone, as the maintenance, if any, payable to the step mother ought to have been divided amongst all his siblings. He submits that in

this regard, a petition bearing Application U/S 482 No. 42394 of 2023 is already pending before this Court and is fixed for 9.1.2024. He prays that since the issue pending here, therefore, the court has shown undue haste in issuing warrants against the applicant by dismissing his application filed on 2.12.2023 seeking stay of the recovery warrants. Learned counsel has further submitted that trial court has erroneously issued warrants against him, therefore, the indulgence of this Court is warranted.

Upon hearing the learned counsel for applicant and considering his submissions, this Court does not find any merit in this application, which is not based upon any substantial cause of action. Since, the order granting maintenance in favour of opposite party no.2-step mother is operative, in the absence of any interim relief in favour of applicant, therefore, it cannot be said that the trial court has wrongly declined his prayer to stay the recovery warrants.

Concededly, the recovery warrants were issued prior to the filing of the petition bearing Application U/S 482 No. 42394 of 2023 and the amount is recoverable under the orders of the court, therefore, the court has rightly observed that report on the warrants issued has not been received and refused to stay the said warrants.

During the course of hearing, it is not disputed by learned counsel that in the earlier petition, the

issuing of recovery warrants have not been challenged.

In view of the above discussion, this Court is not inclined to exercise the inherent powers under Section 482 Cr.P.C. The application is accordingly, dismissed.

Order Date :- 14.12.2023

P.S.Parihar