

**Court No. - 28**

**Case :-** APPLICATION U/S 482 No. - 11584 of 2023

**Applicant :-** Mohd. Imran Khan

**Opposite Party :-** State Of U.P. Thru. Secy. Home Deptt. Lucknow And Another

**Counsel for Applicant :-** Brijesh Kumar Tiwari

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mrs. Jyotsna Sharma,J.**

1. Heard Sri Brijesh Kumar Tiwari, learned counsel for the applicant and the learned A.G.A. for the State.

2. This application under section 482 Cr.P.C. has been filed by the applicant with the following main prayer:

*(i) To allow the petition of the petitioner under section 482 Cr.P.C. and quash the order dated 20.09.2023 and 13.10.2023 in a case 'Nayyar Jaha V/s. Mohd. Imaran Khan' bearing Case No.-134 of 2023, under section 125(3) Cr.P.C., P.S- Kotwali, District- Unnao, pending against the petitioners in the Court of Additional Principal Judge.*

*(ii) To direct to decide the application under section 127 Cr.P.C. bearing case No. 55 of 2023 moved by the petitioner pending before Additional Principal Judge Ist Family Court, Unnao within stipulated time.*

3. The facts relevant for the purpose of this case as revealed from the perusal of the papers on record and from submissions of the parties are as below.

(I) Opposite party no.2 filed an application under section 125 Cr.P.C. registered as Criminal Case Case No. 353 of 2015. The learned Ist Additional Principal Judge, Unnao, passed an order on 14.12.2022 directing the applicant to pay Rs. 4500/- per month as maintenance. It may be noted that this order was passed on merits after hearing both the sides.

(II) The opposite party no.2 filed an application under section 125 (3) Cr.P.C. for recovery of the maintenance amount with the submission that since the date of the judgment (i.e. 14.12.2022), an amount of Rs. 6,43,500/- became due on her husband, therefore, same may be recovered by issuing a recovery warrant.

(III) The court concerned issued recovery warrant by an order dated 20.09.2023. The aforesaid order is impugned in this application.

(IV) Subsequently, in the same proceeding for recovery of maintenance amount, the court concerned passed another order on 13.10.2023, fixing the case for objection and disposal. It may be noted that in the impugned order dated 13.10.2023, the instant applicant was represented through a counsel and he moved an application to exempt his personal appearance. By the very same order, the case was posted for hearing on 04.12.2023.

(V) The orders dated 20.09.2023 and 13.10.2023 are under challenge in the present petition.

4. The submissions of the applicant are that he divorced his wife as per the Muslim customary law on 17.11.2011 and that he filed case under section 7 of Family Court Act i.e. Case No. 347 of 2011 and the learned court of Principal Judge passed an order dated 13.11.2014 decreeing the same. Further submission of the applicant is that his wife moved an application i.e. Misc. Application No. 41C of 2015 for recall of the order dated 13.11.2014, she didn't prosecute the same, therefore, that misc. application was dismissed for want of prosecution.

The applicant moved another application under section 127 Cr.P.C. on 13.01.2023, which is admittedly pending.

The main contention is that a decree declaring him to be have obtained divorce is existing and he has already filed an application under section 127 Cr.P.C. therefore, the issuance of recovery warrant against him is bad in law. It is further submitted that he was not allowed to present his side before the court concerned before issuance of recovery of warrants.

5. I perused the material on record in the light of contentions of the applicant.

(i). This fact is indisputable that the criminal case no. 353 of 2015 filed under section 125 Cr.P.C. was decided after contest from both the sides and after hearing both of them.

(ii). This is an admitted position that *ex parte* decree of divorce was obtained way back on 13.11.2014 that is about 8 years earlier than the judgment passed in 125 Cr.P.C. application and the applicant took the plea of divorce in maintenance case and the same was considered by the court concerned. Undisputedly, the husband did not file any revision challenging the order passed against him in 125 Cr.P.C. case.

(iii). Section 127 Cr.P.C. provides that on proof of a "change in the circumstances" of any person receiving monthly allowances under section 125 Cr.P.C., a suitable alteration, cancellation and variation in the order can be made, as Magistrate thinks fit, under certain conditions. Important thing is that the section 127 Cr.P.C. enables the Magistrate to consider the change in circumstance which has occurred after passing of maintenance order.

(iv). This fact is also noticeable that the application moved under section 127 Cr.P.C. is still pending and has not been decided finally. In my view, if there is any substance in the application moved by the application under section 127 Cr.P.C., the Court has the power to vary, cancel and alter the order of maintenance. Meaning thereby that whatever the grounds the applicant has taken, he has the opportunity to press them before the court concerned and obtain an order/judgment. However, till then, the executing court is under obligation to proceed as per provisions of section 125 (3) Cr.P.C. As of now, the order passed under section 125 (3) Cr.P.C., on the basis whereof the recovery proceedings have commenced, is still intact and admittedly the applicant has not paid any amount till now.

6. In my view, the application lacks substance and there is no good reason to interfere in the impugned orders, therefore, the application is **dismissed**.

7. Let a copy of order be transmitted to the court concerned.

**Order Date :- 28.11.2023/Sumit Kumar**