

Court No. - 75

Case :- APPLICATION U/S 482 No. - 19882 of 2024

Applicant :- Salman @ Shahnawaj

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

Counsel for Applicant :- Jitendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.
2. This application under Section - 482 Cr.P.C. has been preferred against order dated 18.12.2023, passed by the learned Additional Principal Judge, Family Court, Ghaziabad, in Case No. 1130 of 2022 (Hina vs. Salman), under Section 125 Cr.P.C., P.S.- Loni, District- Ghaziabad, whereby maintenance has been granted in favour of opposite party no.2.
3. Learned A.G.A. has raised a preliminary objection that this application under Section 482 Cr.P.C. against order of maintenance passed under Section 125 Cr.P.C. is not maintainable.
4. Learned counsel for the applicant submitted that by impugned order interim maintenance has been granted and against such order application under Section 482 Cr.P.C. is maintainable.
5. I have considered the rival submissions and perused the record.
6. So far the question of maintainability of the present application under Section 482 Cr.P.C. is concerned, it may be observed that this application under Section 482 Cr.P.C. has been preferred against order dated 18.12.2023, by which interim maintenance has been granted. In case of **Ashu Jain vs. State of U.P. and others**

2023:AHC:165660, in paragraph no.15, 16 and 17, this Court has held as under :-

"15. For initiating proceeding under Section 125 Cr.P.C., procedure is provided in the Act, 1984 and relevant provision is Section 19 of Act, 1984, which is being quoted hereinbelow:

"19. Appeal.--(1) Save as provided in sub-section(2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.] (5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family court.

(6) an appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

16. Section 19 of the Act, 1984 clearly provides about the provision of appeal or revision only against the order or decree of the Family Court. The law is settled that special law shall prevail over the general law. Therefore, in light of provision under Section 19 of the Act, 1984, the only remedy before the applicant is to file revision under Section 397 Cr.P.C. in case the matter doesn't fall within the exceptions provided by the Apex Court in the matter of Dhariwal Tobacco Products Ltd.(Supra) as well as Prabhu Chawla(Supra).

17. Similar matter was before Uttarakhand High Court in Ashu Dhiman(supra) and the Court has taken the same view. Relevant paragraph of the aforesaid judgment is quoted hereinbelow:

"17. In view of the definition of the interlocutory order and the ratio of the judgment supra, this Court is of the view that an order passed under Proviso to sub section (1) of Section 125 of Cr.P.C. rejecting or allowing an application for maintenance, pending proceedings, is not an interlocutory order which adjudicates the rights of the parties to some extent. The revision under Section 397 of Cr.P.C. is maintainable. It has been held that such an order is amenable to revisional jurisdiction of this Court. The powers of High Court under Section 482 of Cr.P.C. are inherent in nature and could be exercised where statutory remedy of appeal and revision under the Cr.P.C. is not available. Thus, in view of the findings recorded above that revision against such an order is maintainable, an application under Section 482 of Cr.P.C. would not be maintainable. The core issue framed by this Court to deal with the controversy is answered accordingly. Since the criminal misc. applications filed by the applicant(s) under Section 482 of Cr.P.C. are not maintainable, the applicant(s) would be at liberty to avail the remedy of filing revision, if so advised.

18. Again this issue was subject matter before the Madhya Pradesh High Court in Rajendra Kumar(Supra) and view of the Court was again the same. Relevant paragraph of the said judgment is quoted hereinbelow: "

"18. Considering the above legal position, I am of the considered view that order of maintenance affects right of a person drastically and substantially, hence, it cannot be treated as interlocutory order and criminal revision should be preferred under Section 19(4) of the Family Courts Act against the order passed on the application for interim maintenance by the Family Court."

7. In case of Akansha Arora vs. Tanay Maben (Misc. Criminal Case No. 18481 of 2022), decided by the Hon'ble Madhya Pradesh High Court on 21.09.2023, in paragraph no.15, the Hon'ble Madhya Pradesh Court has held as under :-

"15. In view of discussion in the foregoing paras and established legal position, I am of the considered opinion that as the petitioner has filed present petition under Section 482 of Cr.P.C. challenging the impugned order passed under Section 125 of Cr.P.C. for grant of interim maintenance and as it is revisable/revision is maintainable against the said order, therefore, petition under Section 482 of Cr.P.C. challenging such an order is clearly barred & is not maintainable."

8. In case of Nitish Kumar vs. Neha Kumari (Cr. MMO No.1083 of 2022), decided by the Hon'ble Himachal Pradesh High Court on 14.12.2023, in paragraph no.13, the Hon'ble Himachal Pradesh High Court has held as under :-

"13. Therefore, it is apparent that the Court cannot exercise power under Section 482 of Cr.P.C. when an alternative remedy is available. Since an alternative remedy under Section 19(4) of the Family Courts Act is available; therefore, the petition under Section 482 of Cr.P.C. will not lie before this Court."

9. In case of **Ashu Jain** (supra), this Court has taken a clear view that against an order of maintenance passed under Section - 125 Cr.P.C. by the family court, application under Section - 482 Cr.P.C. is not maintainable. Similarly, in above referred case of **Akansha Arora** (supra), it has been held that an application under Section - 482 Cr.P.C. challenging the order of grant of interim maintenance under Section - 125 Cr.P.C. is not maintainable. Similar view has been taken retaliated in case of **Nitish Kumar** (supra). Thus, it is apparent that instant application under Section - 482 Cr.P.C. is not maintainable.

10. Accordingly, this application under Section 482 Cr.P.C. is **dismissed as not maintainable.**

Order Date :- 13.11.2024

SP/-