

Court No. - 13

Case :- APPLICATION U/S 482 No. - 6025 of 2024

Applicant :- Sunil Kumar Yadav @ Sunil Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko And
Anothers

Counsel for Applicant :- Ashish Kumar Rastogi, Sagun Chandra Rastogi

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the parties.
2. The present application has been filed challenging the order dated 16.03.2024 passed by Additional Principal Judge, Family Court, Faizabad now Ayodhya (in short "trial court") on application under Section 126(2) Cr.P.C. in Case No. 116 of 2023, Computerized Case No. 341 of 2023 (Shri Sunil Kumar vs. Smt. Sonu Yadav).
3. It appears from the record that the opposite party No. 2/Smt. Sonu Yadav, living separately since 2018, preferred an application under Section 125 Cr.P.C. registered as Case No. 86 of 2019. The trial court proceeded in the matter and on account of non-appearance of the applicant, allowed the said application by an ex-parte judgment/order dated 24.09.2021, as per which, the applicant is under obligation to pay Rs. 10,000/- per month to the opposite party No. 2 from the date of filing of the said application, which is in consonance with the judgment passed by the Hon'ble Apex Court in this regard.
4. It would be apt to indicate here that the application was preferred by the opposite party No. 2 under Section 125 Cr.P.C. on 28.02.2019. The amount aforesaid has not been provided/paid to the opposite party No. 2 by the applicant. This fact is admitted.
5. It further appears that after the final order dated 24.09.2021, the applicant preferred an application under Section 126(2) Cr.P.C. for recalling/setting aside the ex-parte judgment/order dated 24.09.2021. This application was allowed by the trial court vide order under challenge dated 16.03.2024.
6. It is apparent from the order under challenge dated 16.03.2024 that the trial court took note of the facts as indicated in the application under Section 126(2) Cr.P.C., which is annexed as Annexure No. 10 to this application, and also the fact that vide final order dated 24.09.2021 passed on the application preferred by the opposite party No. 2 under Section 125 Cr.P.C., the court concerned directed the applicant to pay Rs. 10,000/- per month as an amount towards maintenance and the said amount has not been paid till date, and upon due consideration of the aforesaid, the trial court allowed the application under Section 126(2) Cr.P.C.

with cost of Rs. 75,000/- vide order under challenge dated 16.03.2024.

7. Impeaching the order dated 16.03.2024, learned counsel for the applicant says that while passing the order impugned, the trial court has not taken note of the fact pertaining to maintenance awarded to the opposite party No. 2 i.e. to the tune of Rs. 5,000/- under the proceedings initiated by the opposite party No. 2 under Section 12 of Domestic Violence Act, 2005 (in short "Act of 2005"), as such, in view of the law laid by the Hon'ble Apex Court, interference is required in the matter.

8. Learned AGA opposed the present application. He says that on one pretext and another, the applicant is avoiding payment of amount of maintenance to the opposite party No. 2, which was awarded way back in the year 2021 and further that the opposite party No. 2 is living separately from the applicant since 2018 and thus in view of the conduct of the applicant, no interference is required in the matter.

9. At this stage, on being asked by the learned counsel for the applicant regarding averments made in the present application based upon the observations made by the Hon'ble Apex Court in the case of **Rajnish vs. Neha and another** reported in **(2021) 2 SCC 324**, he says that there is no pleading in this application in terms of the judgment passed by the Hon'ble Apex Court in the case of **Rajnish (supra)**.

10. Again on being asked, learned counsel for the applicant says that the applicant is serving in Government Instrumentality/Jal Kal Nigam on Class 3rd Post and he must be getting an amount between 40,000-50,000/- as salary.

11. Considered the aforesaid and perused the record.

12. So far as the contention of the learned counsel for the applicant regarding adjustment of amount is concerned, this Court took note of the contents of the application preferred by the applicant under Section 126(2) Cr.P.C. annexed as Annexure No. 10 to the present application.

13. From a perusal of the application supported with an affidavit, it is apparent that the applicant has not pleaded anything from which the facts pertaining to the proceedings initiated by the opposite party No. 2 under Section 12 of the Act of 2005 could be deduced, as such, there was no occasion for the trial court to deal with the matter. Thus, the submissions advanced in this regard are completely misconceived and fallacious.

14. The present case relates to maintenance claimed by the opposite party No. 2 (wife of the applicant) and as such, it would be apt to refer some pronouncements on the issue.

15. In the case of **Anju Garg and another vs. Deepak Kumar Garg** reported in **2022 SCC OnLine SC 1314**, the Hon'ble Apex Court observed as under:-

"9. it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate

the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in *Bhuwan Mohan Singh v. Meena*. This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C have to be dealt with by the Court. It held as under:

"In Dukhtar Jahan v. Mohd. Farooq [(1987) 1 SCC 624 : 1987 SCC (Cri) 237] the Court opined that : (SCC p. 631, para 16)

16. "... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

8. A three-Judge Bench in *Vimala (K.) v. Veeraswamy (K.) [(1991) 2 SCC 375 : 1991 SCC (Cri) 442]*, while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)

3. "Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife."

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat [(1996) 4 SCC 479 : 1996 SCC (Cri) 762]*, while adverting to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

15. "... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

10. In *Chaturbhuj v. Sita Bai [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356]*, reiterating the legal position the Court held : (SCC p. 320, para 6)

6. "... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508]* falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]*."

11. Recently in *Nagendrappa Natikar v. Neelamma [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346]*, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of

maintenance to a wife who is unable to maintain herself and her children".

16. In the case of **Rajnesh (supra)**, the Hon'ble Apex Court approved the proportion held by the Delhi High Court in the case of **Chander Prakash Bodh Raj vs. Shila Rani Chander Prakash** reported in **1968 SCC OnLine Del 53**, which reads as under:-

"an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

17. The Hon'ble Apex Court in the case of **Kulbhushan Kumar Vs. Raj Kumari** reported in **(1970) 3 SCC 129** has held that 25% of the husband's net salary would be just and proper to be awarded as maintenance allowance to the wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the financial capacity of the husband to make the payment.

18. In the case of **Kalyan Dey Chaudhary Vs. Rita Dey Chaudhary Nee Nandy** reported in **(2017) 14 SCC 200**, the Hon'ble Apex Court has followed the quantum of maintenance fixed by the Hon'ble Apex Court in Kulbhushan Kumar (supra) that 25% of net income of the husband should be paid to the wife as maintenance.

19. Upon due consideration of the judgments, referred above, and also the facts that the opposite party No. 2 (wife of the applicant) is living separately since 2018 and till date not a single penny has been given by the applicant to the opposite party No. 2, who, in this view of the matter, must be in dire need of money for sustenance, this Court is not inclined to interfere in the cost awarded by the trial court.

20. In view of aforesaid, the application has no force. It is accordingly **dismissed**.

21. It would be apt to indicate that the matter has to be decided finally and all pleas are open for the applicant.

Order Date :- 9.7.2024

Arun/-