



2025:UHC:3782

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No.610 of 2025

08 May, 2025

Ajendra Kumar

--Petitioner

Versus

State of Uttarakhand and Others

--Respondents

Presence:-

Mr. Ankur Sharma, Advocate for the petitioner.

Mr. Deepak Bisht, learned Deputy Advocate General for the State.

Hon'ble Vivek Bharti Sharma, J.(Oral)

This C528 petition is filed for quashing order dated 28.11.2024 as well as subsequent orders of recovery warrant issued by the learned Principal Judge, Family Court, Dehradun in Misc. Case No.127 of 2024, "*Smt. Jyoti Rathor Vs. Shri Ajendra Kumar*" U/s 125(3) Cr.P.C. against the petitioner and stay the entire proceedings of Misc. Case No.127 of 2024, "*Smt. Jyoti Rathor Vs. Shri Ajendra Kumar*" U/s 125(3) Cr.P.C. as well as order dated 28.11.2024.

2. Brief facts as per the petitioner are that marriage was solemnized between the petitioner and respondent no.3 on 08.12.2001 without any demand of dowry; that, from the wedlock one daughter namely Astha Rathor and one son Akshat Rathor was born; that, after passing of considerable time the relations between



the parties became constrained and the petitioner made every effort to save his relationship but respondent no.3 left the matrimonial house; that, on 17.06.2023, respondent no.3 filed application U/s 125 Cr.P.C. for maintenance and the case was registered as Misc. Case No.175 of 2023, "*Smt. Jyoti Rathor Vs. Shri Ajendra Kumar*" (*Annexure No.1 to the petition*); that, thereafter, learned Court below issued notices for settlement between the parties as well as for filing objections to the application filed by respondent no.3; that, the petitioner did not participate in the proceedings; that, the application U/s 125 Cr.P.C. was decided *ex-parte* and maintenance of ₹30,000/- was awarded to the respondents.

3. Learned counsel for the petitioner would further submit that the petitioner did not have knowledge about the ex-parte proceedings; that, when the petitioner came to know about the aforesaid proceedings, the petitioner filed recall application U/s 126(2) Cr.P.C. along with delay condonation application which is registered as Case No.182 of 2024, "*Ajendra Kumar Vs. Jyoti Rathor and Others*" (*Annexure No.3 to the petition*).

4. Learned counsel for the petitioner would further submit that the petitioner is paying interim



maintenance regularly but the recovery warrants have been issued against him; that, the petitioner is complying with the order and paying maintenance; that, recovery proceedings of the Court below is gross miscarriage of justice and abuse of process of law, therefore, the same may be quashed.

5. Perused the record in view of the submission made by learned counsel for the petitioner.

6. From the perusal of the record, it is clear that the petitioner has filed this petition to evade and delay the process of law, which is evident from the fact that the petitioner has not brought on record impugned order dated 28.11.2024 as well order dated 05.12.2023, which he is praying to quash, with the clear intention to conceal the complete facts from the Court.

7. The Family Court itself had issued summons for appearance of the petitioner and when he did not participate in the proceedings, the Family Court decided application U/s 125 Cr.P.C. ex-parte and passed the order of maintenance. Even after knowing about the ex-parte order of maintenance, the petitioner did not comply with the said order of the Family Court and did not pay interim maintenance to the respondent/wife, therefore, the Family Court was constrained to issue recovery warrants and today the petitioner is pressing this petition



for quashing the recovery warrants.

8. If the petitioner would be paying the interim maintenance to the respondents then there was no question of issuing recovery warrants by the Family Court concerned. Therefore, the grounds taken in this petition are frivolous and it is an attempt to mislead the process of law, therefore, this petition deserves to be dismissed.

9. It is trite that the powers under Section 528 BNSS have to be exercised sparingly, carefully and with caution and only to prevent abuse of process of any Court or otherwise to secure ends of justice. In view of this Court, this is not the fit case where the powers U/s 528 BNSS should be exercised.

10. In view of the above, this Court is not inclined to interfere in the impugned orders. Accordingly, present C528 petition lacks merits and the same is dismissed in *limine*.

(Vivek Bharti Sharma, J.)
08.05.2025

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