

Court No. - 11

Case :- APPLICATION U/S 483 No. - 426 of 2024

Applicant :- Shiva Pankaj And Another

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

Counsel for Applicant :- Annapurna Agnihotri

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Ms. Annapurna Agnihotri, the learned counsel for the applicants and Sri Rakesh Kumar Singh, the learned AGA for the State.
2. Keeping in view the nature of relief claimed, issuance of notice to the opposite party no. 2 is dispensed with.
3. By means of the instant application filed under Section 483 Cr.P.C., the applicants have sought issuance of a direction to the learned Additional Principal Judge (APJ-07), Family Court, Lucknow to decide Case No. 121/2022 (Shiva Pankaj & Anr. v. Prahlad Kumar), under Section 125 Cr.P.C., expeditiously.
4. The learned AGA has raised a preliminary objection that under Section 483 Cr.P.C., this Court exercises power of superintendence over the courts of judicial magistrates subordinate to it whereas the applicants are seeking a direction to the learned Additional Principal Judge, who is not a court of magistrate and, therefore, the application under Section 483 Cr.P.C. seeking issuance of a direction to the Additional Principal Judge, Family Court is not maintainable.
5. Replying to the aforesaid preliminary objection, the learned counsel for the petitioner has submitted that while deciding an application under Section 125 Cr.P.C., the Family Court exercises the jurisdiction of a magistrate and, therefore, an application under Section 483 Cr.P.C. will be maintainable for issuing a direction for expeditious disposal of an application under Section 125 Cr.P.C.

6. Section 7 of the Family Courts Act provides as follows:-

"7. Jurisdiction.-(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

7. A Full Bench of Madhya Pradesh High Court was dealing with the following question in *Rajesh Shukla v. Meena & Anr.*: 2005 CRILJ 3800 'Whether against the order passed by the Family Court in an application under Section 125 of the Code while exercising jurisdiction under Chapter IX of the Code, revision under Sub-section (4) of Section 19 of the Act should be registered as Civil Revision or Criminal Revision or Revision Petition (Family) ?'

8. While deciding this question, the Full Bench of Madhya Pradesh High Court held that "From perusal of the scheme of the Act, it is clear that Family Court exercises two types of powers. Cases except the case under Chapter IX of the Code are decided by the Family Court as a District Court. The Family Court while dealing with the proceedings under Chapter IX of the Code Family Court exercises the jurisdiction of a Judicial Magistrate First Class."

9. As the Family Court exercises jurisdiction of judicial magistrate while deciding an application under Section 125 Cr.P.C., an application under Section 483 Cr.P.C. seeking a direction to the Family Court for expeditious disposal of an application under Section 125 Cr.P.C. would be maintainable.

10. Accordingly, I reject preliminary objection raised by the learned AGA and proceed to examine the merits of the case.

11. The petitioner no. 1 got married to the opposite party no. 2 on 19.02.2012. She gave birth to a daughter-petitioner no. 2, on

23.01.2014. The petitioner no. 1 alleges that the opposite party no. 2 used to ill treat her and he threw her and her daughter out of her matrimonial home in the night of 21.12.2021. On 02.02.2022, the petitioners filed an application under Section 125 Cr.P.C. claiming maintenance. The opposite party no. 2 filed an application dated 17.05.2023 under Section 125(4) Cr.P.C. praying for rejection of the application under Section 125 Cr.P.C. On 28.02.2023, the petitioners filed an application for payment of interim maintenance, to which the opposite party no. 2 filed his objections on 18.04.2023. The case has repetitively been adjourned since then and the application for interim maintenance has not been decided till date.

12. The third proviso appended to Section 125(1) Cr.P.C. provides that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

13. As the petitioners' application under Section 125(1) Cr.P.C. for payment of interim maintenance is pending since 18.04.2023 although the period of sixty days provided in the third proviso appended to Section 125(1) Cr.P.C. for disposal of the application for interim maintenance has expired long ago, it would be expedient in the interest of justice that a direction be issued to the Family Court for expeditious disposal of the application for interim maintenance.

14. Accordingly, the instant petition is *allowed*.

15. The learned Additional Principal Judge (APJ-07), Family Court, Lucknow is directed to dispose of the pending application for payment of interim maintenance to the petitioners expeditiously, keeping in view the statutory mandate contained in third proviso appended to Section 125(1) Cr.P.C.

Order Date :- 7.6.2024

Pradeep/-