
(2010) 10 AHC CK 0129
In the Allahabad High Court
Case No : Misc. Single No. 6433 of 2010

Deepak Bhatnagar

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 125, 126

Citation : (2010) 10 AHC CK 0129

Hon'ble Judges : S.C. Chaurasia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Chaurasia, J.—Heard Sri Anurag Srivastava, learned Counsel for the Petitioner, Sri Himansu K. Srivastava, learned Counsel for the opposite party No. 4, learned A.G.A. and perused the record.

2. This writ Petition under Article 226 of the Constitution of India has been filed with the prayer that a writ, order or direction in the nature of certiorari may be issued quashing the impugned order dated 25-11-2008 passed by Additional Civil Judge (Jr. Division) VI/Judicial Magistrate, Bahraich, opposite party No. 3 and the order dated 31-05-2010 passed by the opposite party No. 2 rejecting the application u/s 126 Code of Criminal Procedure and the order dated 26-08-2010 passed by the District Judge, Bahraich, opposite party No. 1, contained as Annexures Nos. 7, 9 and 10 to the writ Petition, and a writ, order or direction in the nature of mandamus, may be issued commanding the opposite parties not to enforce the orders passed on the application u/s 125 Code of Criminal Procedure, moved by opposite party No. 4.

3. Learned Counsel for the Petitioner has submitted that no cause of action has arisen at district-Bahraich and the courts at Bahraich, have no jurisdiction to pass the impugned orders. He has further submitted that the Petitioner is a low paid employee and is not in a position to pay maintenance allowance to his wife as

directed by the court and hence, the impugned orders deserve to be quashed.

4. From perusal of the record, it transpires that an application u/s 125 Code of Criminal Procedure was moved by the opposite party No. 4, Smt. Ragini Saxena against her husband, Deepak Bhatnagar, opposite party-Petitioner on 20-05-1999 for granting maintenance allowance. Since the opposite party/Petitioner did not contest the case, the ex-parte judgment was delivered on 01-03-2000. The Petitioner moved an application on 24-04-2000 for recall of the said judgment, which was disposed of on 05-01-2004, and the ex-parte judgment dated 01-03-2000, was recalled. Thereafter, the Petitioner moved an application on 10-08-2004 challenging the jurisdiction of the court, which was disposed of on 06-12-2006. Thereafter, the Petitioner did not file Written Statement in the proceedings u/s 125 Code of Criminal Procedure inspite of sufficient opportunity granted to him. He did not participate in the said proceedings. Consequently, the application u/s 125 Code of Criminal Procedure, was disposed of vide exparte judgment dated 25-11-2008 and he was directed to pay a sum of Rs. 2500/ - per month, as maintenance allowance to his wife. The Petitioner preferred a revision against the said ex parte judgment and the revision was dismissed by the learned Sessions Judge, Bahraich, vide judgment and order dated 26-08-2010. Feeling aggrieved by the said order, the Petitioner has filed this writ Petition.

5. It is clear from the facts mentioned above that inspite of sufficient opportunity provided to the Petitioner, he had not contested the case and the application u/s 125 Code of Criminal Procedure, was disposed of ex-parte. The proceedings are pending since the year 1999 and it appears that the Petitioner, himself, has misused the process of the court.

6. I do not find any manifest error of law in the impugned orders so as to call for interference by this Court in exercise of its writ jurisdiction u/s 226 of the Constitution of India. This writ Petition lacks merit and it is dismissed accordingly.