

(2002) 05 AHC CK 0090

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 762 of 2002

Dheeraj Kumar

APPELLANT

Vs

Kiran Devi & Anr.

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2002) 05 AHC CK 0090

Hon'ble Judges : Bhanwar Singh, J

Final Decision : Dismissed

Judgement

Bhanwar Singh, J.—Heard.

2. This petition under Section 482 Cr. P.C. has been filed by Dheeraj Kumar, who is the husband of the oppositeparty No. 1, Smt. Kiran Devi. A petition under Section 125 Cr. P.C. was filed by the oppositeparty No. 1 praying for monthly maintenance allowance. The said petition was decreed ex parte vide judgment of May 11, 2001 passed by the III Additional Chief Judicial Magistrate, Barabanki. The petitioner moved an application for setting aside the ex parte judgment. The said application is still pending. However, without delving upon the petitioner's plea for reversal of the ex parte judgment, the learned III Additional Chief Judicial Magistrate proceeded to recover the amount of maintenance allowance. Even in the revision filed in the Court of Sessions Judge, the petitioner could not get any relief. In this context, it is significant to note that the petitioner moved the restoration application seeking for setting aside of the ex parte judgment only three days after the passing of the ex parte order. The III Additional Chief Judicial Magistrate, keeping the said application pending, proceeded to recover the maintenance allowance in pursuance of the ex parte judgment. Such a move is certainly against all norms of justice. The petitioner should have been heard before the recovery proceedings being initiated. He may or he may not have a sufficient cause, which might have prevented him from appearing before the Court during the course of the proceedings but he could have been given an

opportunity of being heard. Issuing orders for recovery and insisting on the recovery proceedings without hearing the petitioner is likely to entail miscarriage of justice. The Revisional Court by keeping the revision pending and permitting the other parties to proceed for recovery of the amount will not serve the cause of justice and protect the interest of the petitioner.

3. Considering all these facts and circumstances, I am of the view that both the recovery proceedings as well as the Criminal Revision No. 229 of 2001, are liable to be quashed. Accordingly, the recovery proceedings in pursuance of Order dated 13112001 and the proceedings of Criminal Revision No. 229 of 2001 are hereby quashed. The learned Additional Chief Judicial Magistrate, Barabanki, who is seized of the matter, is directed to hear the petitioner's application for setting aside the ex parte order and take an early decision, before proceeding further, in accordance with law.