
(1999) 04 AHC CK 0038
In the Allahabad High Court
Case No : Criminal Revision No. 142 of 1993

Mohd. Nayeem Anjum	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127

Citation : (1999) 3 ACR 2579

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Judgement

B.K. Rathi, J.—Heard Sri S.C. Tiwari, learned Counsel for the applicant, Sri A.P. Tiwari, learned Counsel for opposite parties Nos. 2 and 3 and the learned A.G.A.

2. The applicant is the father of opposite party Nos. 2 and 3, who are minors. They moved an application u/s 125, Code of Criminal Procedure through their mother, on which the maintenance allowance of Rs. 100 each was granted to them. On their subsequent application u/s 127, Code of Criminal Procedure through their mother the maintenance allowance has been enhanced to Rs. 500 each by the impugned order dated 4.3.98 by the Principal Judge, Family Court, Kanpur Nagar. Aggrieved by that order, the present revision has been filed.

3. The main grievance of the applicant is that there was a written agreement between the applicant and the mother of opposite party Nos. 2 and 3, according to which the marriage was dissolved and opposite party Nos. 2 and 3 were given in the custody of their mother on the specific condition that she would not claim any maintenance from the applicant. It is further contended that the applicant moved an application to recall the order of granting maintenance of Rs. 100 each to opposite party Nos. 2 and 3 on the basis of agreement. On that application the matter was kept for hearing on 12.3.96 and the order of maintenance was stayed. The mother of minor opposite party Nos. 2 and 3 also filed objections.

4. The only contention is that the said application of the applicant was not

considered at all in the judgment enhancing the maintenance by the impugned order. The perusal of the order shows that there is no reference of the said application and the agreement in that order. A copy of the order dated 17.2.96 has been filed, which shows that the application of the applicant was pending. Therefore, it is also necessary for the trial court to consider that application while he was considering the application of opposite party Nos. 2 and 3 for enhancement of maintenance. Therefore, the impugned order of the Principal Judge, Family Court is fit to be set aside.

5. The revision is accordingly allowed and the impugned order dated 4.3.98 is set aside. The matter is sent back for rededcision on the application u/s 127, Code of Criminal Procedure of the opposite party Nos. 2 and 3 along with the application of the applicant for setting aside the order of maintenance.