
(1995) 08 AHC CK 0076

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2603 of 1995

Pankaj Jaggi

APPELLANT

Vs

Sudha & Anr.

RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Citation : (1995) 08 AHC CK 0076

Hon'ble Judges : G.S.N.Tripathi, J

Final Decision : Allowed

Judgement

G. S. N. Tripathi, J.—This is a petition under Section 482, Cr.P.C. directed against the order passed by the learned Magistrate on 161995 ex parte decreeing the claim of the petitioner's wife and awarding maintenance allowance @ Rs. 500 per month. Even before this order was passed, the learned Magistrate had passed an order that the proceedings shall take place ex parte. The petitioner wanted to say that he should also be heard before passing the order, but the learned Magistrate did not heard him and ultimately passed the order dated 161995 ex parte. The petitioner's application for setting aside the ex parte order under Section 126(2) of the Cr. P. C., is still pending. But before deciding that matter, the learned Magistrate has passed an order of recovery (Annexure 13 to the petition) on 1171995.

2. Feeling aggrieved by the order dated 1171995, the petitioner has come to this Court.

3. I have heard learned counsel for the petitioner and perused the record, prima facie it appears that the learned Magistrate is misusing the process of the court. When an application for setting aside the ex parte order is pending, he should have decided it first before passing any order for recovery. But the learned Magistrate has passed an order for recovery against the petitioner. Therefore, the order of the learned Magistrate dated 1171995 suffers from illegality.

4. The petitioner is allowed. The order of the learned Magistrate dated 11/7/1995 issuing recovery warrant, is, hereby, set aside. It is ordered that the learned Magistrate shall consider the application of the petitioner for setting aside the ex parte order dated 16/1/1995 first. After deciding that application only, recovery process shall be issued.

5. A copy of this order shall be given to the learned counsel for the petitioner on payment of usual charges within 3 days.