
(2010) 11 AHC CK 0179
In the Allahabad High Court
Case No : Case No. 4299 of 2010

Pawan Nishad

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 128, 482

Citation : (2010) 11 AHC CK 0179

Hon'ble Judges : Raj Mani Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raj Mani Chauhan, J.—Heard learned Counsel for the petitioner and learned Additional Government Advocate for the State as well as perused the documents available on record.

2. This petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") has been filed by the petitioner for quashing the ex-parte judgment and order dated 21.1.2009 (Annexure No. 1) passed by the learned Principal Judge, Family Court, Faizabad as well as the impugned for attachment and sell warrant (Annexure 4) issued by the learned Principal Judge, Family Court, Faizabad.

3. From a perusal of the record, it appears that the opposite party No. 2 Smt. Kumkum Nishad had moved an application u/s 125 of the Code before the Family Court, Faizabad against the petitioner for interim maintenance which was allowed by the learned Principal Judge, Family Court, Faizabad vide impugned judgment and order dated 21.1.2009. Thereafter, the opposite party No. 2 moved an application u/s 128 of the Code for realization of the arrears of interim maintenance allowance. The learned Principal Judge, Family Court, Faizabad on the application moved u/s 128 of the Code issued order for attachment and sale of the property of the petitioner vide impugned order (Annexure 4).

4. The submission of learned Counsel for the petitioner is that the learned Principal Judge has sent the recovery warrant to the police of P.S. Kareli, Allahabad for realization of the interim maintenance allowance by attachment and sale of the property which does not belong to the petitioner. Therefore, the recovery warrant issued by the learned Principal Judge is liable to be quashed.
5. Learned A.G.A. opposed the petition.
6. Considered the submissions of learned Counsel for the petitioner and learned A.G.A. for the State.
7. Admittedly the petitioner is bound to pay the amount of interim maintenance in compliance of the court's order dated 21.1.2009 whereby the court had allowed the interim maintenance application filed by the opposite party No. 2 against him. Thereafter, she moved application u/s 128 of the Code for realization of interim maintenance allowance and the learned Principal Judge on her application issued warrant for attachment and sale of property of the petitioner which in my opinion does not suffer from any illegality or infirmity and the same does not call for interference.
8. The petition has got no force and is liable to be dismissed.
9. The petition is, therefore, dismissed.
10. However, it will be open to the petitioner to raise any grievance against the impugned orders before the Family Court by moving application, if he has not moved any application to this effect earlier, which will be disposed of by the Family Court.