

(2011) 11 AHC CK 0076
In the Allahabad High Court
Case No : U/S 482/378/407 No. 4422 of 2009

Smt. Poornima Asthana

APPELLANT

Vs

Devendra Kumar Srivastava @ Rajesh

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482
Family Courts Act, 1984 — Section 19, 19(1), 19(2)

Citation : (2011) 11 AHC CK 0076

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble S.C. Chaurasia, J.

(On Criminal Miscellaneous Application No. 16869 of 2011)

1. List revised.
2. None appears on behalf of the opposite party.
3. Heard learned Counsel for the Applicant-Petitioner and perused the record.
4. This application, supported with an affidavit, has been moved on behalf of the Petitioner with the prayer that the order dated 07-02-2011, may be recalled and the petition u/s 482 Code of Criminal Procedure, may be restored to its original number on the ground that the counsel for the Petitioner prayed for withdrawal of the petition with liberty to file an appeal against the impugned judgment and the order was passed accordingly and the petition u/s 482 Code of Criminal Procedure, was dismissed as withdrawn with liberty to the Petitioner to file an appeal in accordance with Section 19 of the Family Courts Act, 1984. But, the Petitioner"s counsel came to know later on that in view of the amended provision of Section 19 of the Family Courts Act, 1984, the appeal is not maintainable against the order passed by the Family Court under Chapter IX of Code of

Criminal Procedure.

5. The opposite parties were granted time to file objections against the said application vide order dated 18-04-2011, but, no objection has been filed as yet.

6. Sub-Sections (1) and (2) of Section No. 19 of the Family Courts Act, 1984, may be quoted as under:

19. Appeal (1) Save as provided in Sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.

7. From the perusal of Sub-section (2) of Section 19 of The Family Courts Act, it transpires that no appeal shall lie from an order passed under Chapter IX of the Code of Criminal Procedure 1973. The said provision was amended w.e.f. 28-12-1991. The order passed u/s 125 Code of Criminal Procedure, which is contained under Chapter IX of the Code of Criminal Procedure, has been challenged in this petition. It appears that due to bonafide mistake of learned Counsel for the Petitioner, the said order dated 07-02-2011, was passed. Under these circumstances, it is expedient in the interest of justice that the order dated 07-02-2011, may be recalled and the petition may be restored to its original number.

8. Accordingly, Application is allowed and the order dated 07-02-2011 is recalled and Criminal Misc. Case No. 4422 of 2009, Smt. Poornima Ashthana v. State of U.P. and Ors. u/s 482 Code of Criminal Procedure, is restored to its original number.