

Sarfuddin. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Aug-02-2010

Judge : Chandr, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 125

Appeal No. : CRIMINAL MISCELLANIOUS No.39026 OF 2004

Appellant : Sarfuddin.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Raj Ballabh Singh, Adv.

Advocate for Pet/Ap. : Mrs. Soni Shrivastava, Adv.

Judgement :

1. This is an application under Section 482 Cr.P.C. seeking quashing of order dated 03.07.2004 passed in Bihar Sharif Case No. 26 (M) of 2002. The proceeding under Section 125 Cr.P.C. allowing Rs. 5,00/- (Five Hundred) per month, by way of interim maintenance to the opposite parties here.

2. It is contended on behalf of the petitioner that the opposite parties has already been divorced much before filing of case under Section 125 Cr.P.C. and the same was also confirmed by the competent court in Divorce Suit No. 06 of 2001 vide ex-parte judgment dated 21.01.2003, passed by Principal Judge, Family Court, Patna.

3. By supplementary affidavit, it has been informed to this court that the ex-parte decree passed in Divorce Suit No. 06 of 2001 has already been set-aside at the instance of opposite parties and the suit is proceeding hearing, where in also again the opposite parties left attending Court.

4. It is also submitted that by way of litigation cost the petitioner has been directed by the Family Court, to pay a sum of Rs. 10,000/- (ten thousand) to the opposite parties, but since there was no prayer for adinterim maintenance, there is no order on this account.

5. After some arguments, learned counsel for the petitioner seeks permission to withdraw this application with a liberty to request the court below i.e. Principal Judge, Family Court, Patna, where the two proceedings, one by way of Divorce Case No. 06 of 2001 and the instant case under Section 125 Cr.P.C. is pending to proceed simultaneously or if permissible, merged both the cases with each other. The learned counsel after initial hesitations concedes to resume payment of interim maintenance awarded by impugned order and deposit the same in either of two proceedings, after obtaining due order from the court below.

6. Permission is granted, with the above liberty and observations this application stands dismissed as withdrawn without any adjudication on merit.

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