



2026:AHC:69539

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL REVISION No. - 2099 of 2026**

Abhishek Gond

.....Revisionist(s)

Versus

State Of U.P. And 3 Others

.....Opposite  
Party(s)

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Counsel for Revisionist(s) : Brij Bhushan Prasad Shrivastava  
Counsel for Opposite Party(s) : G.A., Kusum Mishra, Richa Srivastav,  
Seema Kushwaha

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**Court No. - 82**

**HON'BLE JAI KRISHNA UPADHYAY, J.**

1. Heard Sri Brij Bhushan Prasad Shrivastava, learned counsel for the revisionist and Ms. Richa Srivastava, learned counsel for the opposite party nos. 2, 3 and 4 and learned A.G.A. for the State and perused the record.

2. This criminal revision has been preferred by the revisionist against the ex parte judgement and order dated 13.05.2024 passed by Principal Judge, Family Court Deoria in Maintenance Case No. 1388 of 2023 (Baby Devi and others Vs. Abhishek Gond), under Section 125 Cr.P.C., Police Station Khampar, District Deoria whereby the learned trial Court has allowed the application under Section 125 Cr.P.C. (Corresponding Section 144 B.N.S.S.) and directed the revisionist to pay Rs. 4,000/- per month to the opposite party no.2 (wife) towards her maintenance and Rs. 2,000/- per month to the opposite party nos. 3 and 4 each till attaining the age of majority from the date of application i.e. 22.09.2023.

***"125. Order for maintenance of wives, children and parents.***

*(1) If any person having sufficient means neglects or refuses to maintain-*

*(a) his wife, unable to maintain herself; or*

*(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself; or*

*(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself; or*

*(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:*

***Provided that*** the Magistrate may order the father of minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

***Provided further that*** the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

***Provided also that*** an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

*Explanation. - For the purposes of this Chapter, -*

*(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,*

*(b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.*

*(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.*

*(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such*

*person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:*

***Provided that*** no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

***Provided further that*** if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

*Explanation.* - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

3. Learned counsel for the revisionist submits that the family court has not correctly assessed the income of the revisionist, who is working in U.A.E. (Dubai) as a mechanic assistant and earns about Rs. 19,000/- ( Indian Currency) including his lodging and fooding. He further submits that there is no reliable evidence to show that he is earning Rs. 50,000/- per month. Learned counsel for the revisionist further submits that revisionist has also responsibility of his old age mother to look after, who is suffering from old age disease. It is also submitted that from a bare perusal of letter of *Gram Pradhan* and affidavit of neighbours, it is crystal clear that opposite party no.2 alongwith opposite party no.3 and 4 are living in the house of revisionist and enjoying his property and assets.

4. Learned counsel for the opposite party submits that the wife/opposite party no.2 has no source of income and she is living separately alongwith her two minor child due to the misconduct of the husband and despite

service of notice, the husband has not appeared before the trial court and due to his deliberate non-appearance, the *ex parte* order dated 13.05.2024 has been passed directing to the revisionist-husband to pay Rs. 4,000/- per month to the wife-opposite party no.2 and Rs. 2,000/- per month to the opposite party nos. 3 and 4 each. He further submits that against an *ex parte* order passed under Section 125 Cr.P.C. (Corresponding Section 144 B.N.S.S.), the remedy lies under Section 126 (2) (corresponding Section 145(2) B.N.S.S.).

5. This Court has perused the record annexed with the paper-book and finds that the revisionist cannot challenge the *ex-parte* order before this Court as the same has been passed by the family court in accordance with law after due service of notice and the revisionist has an efficacious and alternative remedy to move an appropriate application under Section 126 (2) Cr.P.C. (corresponding Section 145(2) B.N.S.S.) before the trial court for setting aside the *ex-parte* proceedings and for seeking an opportunity to contest the case on merits. Thus, without availing such statutory remedy, the present revision is not maintainable and is liable to be dismissed on the ground of maintainability. The provision of Section 126 Cr.P.C. (corresponding Section 145 B.N.S.S.) is delineated below:

**"126. Procedure.-**

(1) *Proceedings under section 125 may be taken against any person in any district-*

(a) *where he is; or*

(b) *where he or his wife resides; or*

(c) *where he last resided with his wife, or as the case may be, with the mother of the illegitimate child; or*

(2) *All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:*

***Provided that*** *if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.*

*(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just."*

6. This Court is of the opinion that against the *ex-parte* order passed under Section 125 Cr.P.C. (corresponding Section 144 Cr.P.C.), the jurisdiction is vested in the Judicial Magistrate or the Family Court to recall the order under Section 126 (2) Cr.P.C. (corresponding Section 145 (2) B.N.S.S.), therefore, the power should be exercised by the Judicial Magistrate or the Family Court rather than by filing a revision before this Court and if any order is passed by the Judicial Magistrate or the concerned Judge, Family Court, under Section 126 (2) Cr.P.C., thereafter the revision should be preferred before this Court under Section 19(4) of the Family Courts Act, 1984. The provisions of Section 19 of the Family Courts Act are delineated below:

*"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 (59 of 1991).*

*(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.*

*(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.*

*(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.*

*(6) An appeal preferred under sub-section (1) shall be heard by a Bench*

*consisting of two or more Judges."*

7. Considering the facts and circumstances of the case and submissions made by learned counsel for the parties, this Court finds that the order dated 13.05.2024 passed by the Principal Judge, Family Court, Deoria, is an *ex-parte* order granting Rs. 4,000/- per month maintenance to the wife/opposite party no.2 and Rs. 2,000/- per month each to the opposite party nos. 3 and 4 which has been passed after due service of notice upon the revisionist.

8. This Court further finds that a specific statutory remedy is available under Section 126 (2) of Cr.P.C. (corresponding Section 145 (2) B.N.S.S.) for setting aside such *ex-parte* order before the trial court itself by showing sufficient cause and seeking an opportunity to contest the case on merits. However, in the present case, instead of availing the aforesaid statutory remedy, the revisionist has directly approached this Court by way of the present revision, which, in the considered opinion of this Court, is not in consonance with the provisions of Section 126 (2) Cr.P.C. (corresponding Section 145 (2) B.N.S.S.). Therefore, the revisionist is directed to approach the concerned family court and move an application under Section 126 (2) Cr.P.C. (corresponding Section 145 (2) B.N.S.S.) for recalling the order dated 13.05.2024

9. In case there is any delay in approaching the trial court, it shall be open to the revisionist to move an appropriate application for condonation of delay along with affidavit, if so permissible under law, and the same shall be considered by the concerned court in accordance with law.

10. In view of the availability of such efficacious alternative remedy, this Court is of the considered opinion that the present revision is not maintainable and is liable to be dismissed at this stage.

11. With the aforesaid directions, this revision is dismissed on the ground of availability of alternative remedy.

12. It is open to the revisionist to approach the concerned family court in accordance with law, if so advised, to avail the aforesaid remedy.

**April 1, 2026**  
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**(Jai Krishna Upadhyay,J.)**