



2026:AHC:67823

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 1602 of 2026

Riyazuddin

.....Revisionist(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Revisionist(s)	: Mohd. Samiuzzaman Khan, Obaidur Rahman Khan
Counsel for Opposite Party(s)	: G.A.

Court No. - 87

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Mohd. Samiuzzaman Khan, learned counsel for the revisionist and Sri Shashidhar Pandey, learned A.G.A. for the State.
2. Learned counsel for the revisionist submits that the instant criminal revision has been preferred with the relief which has been mentioned in the prayer clause. The relief mentioned in the prayer clause of the revision is delineated below:-

"It is therefore Most Respectfully prayed that this Hon'ble Court may be pleased to allow the Criminal Revision against the impugned Judgement and Order dated 28.01.2026 passed by learned Principal Judge, Family Court, Ballia (Riyazuddin Versus Jarina) in Criminal Misc. Case No. 1297 of 2023, Under Section 126 (2) Cr.P.C., Police Station-Ubhaon, District-Ballia, quashed and set aside, to secure the ends of justice as learned Principal Judge, Family Court, Ballia has passed the order under Section 125 Cr.P.C. against the Revisionist without given opportunity to the Revisionist.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the effect and operation of the impugned Judgement and Order

dated 28.01.2026 passed by learned Principal Judge, Family Court, Ballia (Riyazuddin Versus Jarina) in Criminal Misc. Case No. 1297 of 2023, Under Section 126(2) Cr.P.C., Police Station-Ubhaon, District-Ballia, to secure the ends of justice as learned Principal Judge, Family Court, Ballia has passed the order under Section 125 Cr.P.C. against the Revisionist without given opportunity to the Revisionist, be stayed during the pendency of the present Criminal Revision, before this Hon'ble Court."

3. Learned counsel for the revisionist submits that initially on 17.12.2019, wife/O.P. No.2 filed an application under Section 125 Cr.P.C. seeking maintenance for herself and her two minor children. He further submits that vide order dated 09.09.2021, the Additional Principal Judge, Family Court, Ballia decided the application under Section 125 Cr.P.C. finally directing the revisionist/husband to pay Rs.3000/- per month to wife/O.P. no.2 and Rs.2000/- per month each to both minor children. He further submits that as the wife/O.P. No.2 did not mention correct address of the revisionist in the application under Section 125 Cr.P.C., therefore, the revisionist could not get information about the ongoing proceedings under Section 125 Cr.P.C. and ultimately, an ex parte order was passed on 09.09.2021 by the concerned Family Court directing him to pay the maintenance amount on monthly basis to his wife and minor children to the extent as mentioned above.

4. Learned counsel for the revisionist further submits that being aggrieved with the ex parte order dated 09.09.2021, the revisionist filed an application under Section 126(2) Cr.P.C. on 22.03.2023 and during its pendency, he has filed Application U/S 482 No.38892 of 2023 before this Court, wherein this Court vide order dated 31.10.2023 has stayed the order dated 09.09.2021 for a period of forty days or till decision of application under Section 126 Cr.P.C. filed on 22.03.2023. Order dated 31.10.2023 is delineated below :-

- 1. Heard learned counsel for the applicant and the learned A.G.A.*
- 2. The applicant has invoked the inherent jurisdiction of this Court assailing the order dated 25.09.2023 whereby recovery warrant has been ordered to be issued against the present applicant in pursuance of the ex parte order dated 09.09.2021*

passed by the Additional Principal Judge, Family Court, Ballia in Case No. 722 of 2019 under Section 125 Cr.P.C.

3. Facts culled out from the record are that marriage of Jarina (respondent no. 2) was solemnized according to muslim rites and rituals, however, at later stage due to some misunderstanding both the parties were separated. Respondent no.2 along with two children have moved an application dated 17.12.2019 for maintenance under Section 125 Cr.P.C. Said application was ex parte allowed vide order dated 09.09.2021 granting maintenance to wife to the tune of Rs.3000/- per mensem and both children to the tune of Rs.2000/- each per mensem which was directed to be paid on 10th day of each month. Respondent no. 2 has moved an application dated 17.12.2019 under Section 125(3) Cr.P.C. for execution of the ex parte order dated 09.09.2021. While the present applicant came to know about the pendency of the application under Section 125 (3) Cr.P.C., he has moved an application dated 22.03.2023 under Section 126(2) Cr.P.C. to recall the ex parte order dated 09.09.2021 passed in proceeding under Section 125 Cr.P.C. During pendency of the applicant under Section 126(2) Cr.P.C., learned Family Court has passed the order impugned dated 25.09.2023 issuing the recovery warrant against the present applicant, which is under challenge before this Court.

4. It is submitted by learned counsel for the applicant that case for maintenance under Section 125 Cr.P.C. has been filed on behalf of respondent no. 2 by concealing the factum of divorce (Talaq) took place between the parties. In this respect a memorandum of understanding dated 22.11.2014 (Annexure-1) was got executed between the parties wherein respondent no. 2 has admitted the divorce (Talaq) and agreed to keep both children with her. It is further submitted that respondent no. 2 is deliberately delaying the proceeding under Section 126(2) Cr.P.C. just to exert pressure upon the applicant intending to extract money pursuant to the ex parte order dated 09.09.2021. It is further submitted that in light of the memorandum of understanding dated 22.11.2014 made by both the parties (present applicant and respondent no. 2), there is no liability entrust upon the present applicant to give maintenance.

5. Having considered the submissions as raised by learned counsel for the applicant and perusal of record, I am of the view that no useful purpose would be served to keep the instant application pending, therefore, this Court deems it appropriate to dispose of the present application, without entering into the merits of the case as mentioned in the application with a direction to the Principal Judge, Family Court, Ballia to decide the application filed under Section 126(2) Cr.P.C. dated 22.03.2023, expeditiously, preferably within a period of one

month from the date of production of certified copy of this order, which shall be filed before the court concerned within a period of one week from today.

6. It is expected that the matter should be decided by a reasoned and speaking order, in accordance with law, after affording opportunity of hearing to the parties concerned without granting unnecessary adjournments to either of the parties.

7. For a period of forty (40) days or till the decision of the application under Section 126 Cr.P.C. dated 22.03.2023 moved on behalf of the present applicant, whichever is earlier, recovery warrant issued in pursuance of the ex parte order dated 09.09.2021 shall remain stayed.

8. With the aforesaid observation/direction, the instant application is finally disposed off.

5. Learned counsel for the revisionist submits that in compliance of order dated 31.10.2023, the concerned Principal Judge, Family Court vide order dated 05.08.2023 has finally decided the application under Section 126(2) Cr.P.C. by dismissing it. He further submits that O.P. No.2 has preferred execution application under section 128 Cr.P.C. and on the said application, the Principal Judge, Family Court, Ballia vide order dated 25.07.2025, issued arrest warrant against the revisionist to recover the arrears of the maintenance amount. He further submits that being aggrieved with the order dated 25.07.2025, the revisionist has filed Application U/S 528 BNSS No.29453 of 2025 before this Court, wherein this Court vide order dated 12.08.2025 quashed the order dated 25.07.2025 with a direction to the concerned court to proceed for enforcing or recovering the arrears of maintenance amount as money decree of a civil court as per provisions of the Code of Civil Procedure as law laid down by the Hon'ble Supreme Court in the case of **Rajnesh vs. Neha and another, (2021) 2 SCC 324**. Order dated 12.08.2025 is being quoted below for ready reference :-

Sri Mohd. Samiuzzaman Khan, learned counsel for the applicant and Sri A.K.Rai, learned A.G.A. for the State are present.

The present application u/s 528 of BNSS of 2023 has been filed with prayer to quash the order dated 25.07.2025 passed by Principal Judge, Family Court, Ballia in execution of Maintenance Case No. 747 of 2021 (Jarina vs. Riyazuddin), under Section 125 (3) of

Cr.P.C., whereby Arrest Warrant has been issued against the applicant to recover the arrears of maintenance.

Learned counsel for the applicant submits that the impugned order has been passed without considering the facts and circumstances of the case and the law laid down by the Supreme Court in Rajnesh vs. Neha & Anr. (2021) 2 SCC 324, wherein it has been directed that the enforcement/execution of orders of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of D.V. Act and Section 128 of Cr. P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the C.P.C., more particularly Sections 51, 55, 58, 60 read with Order XXI of C.P.C.

It is further submitted that the impugned order has been passed to enforce the recovery of arrears of maintenance by issuing Arrest Warrant against the applicant without following the procedure as provided in the Civil Procedure Code.

The matter is related to settled position of law. There is no other point for consideration except issuing non-bailable warrant to recover the arrears of maintenance, due to this reason, the opportunity to call the counter affidavit from the opposite party no. 2 is dispensed with.

In view of above facts and circumstances, the application is allowed and the order dated 25.07.2025 is quashed.

It is made clear that the court concerned may proceed to enforce or recover the arrears of maintenance amount as money decree of a civil court as per provisions of the Code of Civil Procedure as law laid down by the Supreme Court in the case of Rajnesh (supra).

6. Learned counsel for the revisionist further submits that the revisionist has again moved an application under section 126(2) Cr.P.C. on 19.05.2023 which has been dismissed vide order dated 28.01.2026. He submits that the order dated 28.01.2026 has been challenged in this revision. He further submits that the revisionist has not been provided opportunity of hearing at the time of passing the order dated 09.09.2021, therefore, the ex parte order may be recalled. He further submits that the Principal Judge, Family Court, Ballia without scrutinizing each and every fact, vide order dated 28.01.2026 has dismissed the application filed under section 126(2) Cr.P.C., which was supported by an application of section 5 of the Limitation Act. At last he submits that one opportunity may be given to the revisionist for settling the dispute between the parties through mediation proceedings.

7. This Court has perused the entire facts of the case as well as the order dated 28.01.2026 passed by the Principal Judge, Family Court, Ballia on the second application filed under Section 126(2) Cr.P.C. by the revisionist. The application under Section 126(2) Cr.P.C. has been dismissed on the ground of non-maintainability of the second application and this Court finds no illegality or infirmity in the impugned order.

8. However, taking into account the submission of learned counsel for the revisionist for providing an opportunity for settlement of dispute between the parties through mediation proceedings on deposit of 50% arrear amount of the maintenance, the Principal Judge, Family Court, Ballia is directed to provide one opportunity of hearing to mediate the matter between the revisionist/husband and O.P. No.2/wife, upon deposit of 50% of the arrears of the maintenance amount in the month of April, 2026 before it. Thereafter, the concerned Family Court should issue notice to the wife of the revisionist/O.P. No.2 for resolution of the dispute through mediation proceedings and the amount, so deposited by the revisionist/husband shall be given to the wife/O.P. No.2. The revisionist shall also pay regular monthly maintenance amount to his wife/O.P. No.2 as well as his minor children in terms of order dated 09.09.2021 from now onwards.

9. In case of failure in depositing the 50 % of the arrears by the revisionist before the concerned Family Court as well as regular monthly maintenance amount to O.P. No.2 and minor children, in terms of order dated 09.09.2021, the concerned Family Court will be at liberty to proceed for recovery of the entire arrears of the maintenance amount applying interest at the rate of 6% simple bank interest from the revisionist.

10. With the above direction, the revision is disposed of.

(Praveen Kumar Giri,J.)

March 31, 2026
Manish Himwan