2026:AHC:68772

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 13139 of 2026

Munne Shah

.....Applicant(s)

Versus

State Of U.P. And 4 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Nagendra Kumar Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 81

HON'BLE CHAWAN PRAKASH, J.

1. Learned Counsel for the applicant and learned A.G.A. are present.

2. This application under Section 528 B.N.S.S. has been filed by the applicant with the following prayer:

"*It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and issue a direction to the Additional Principal Judge, Family Court, Budaun not to again arrest the applicant for recovery of an amount of Rs. 2,77,000/-in pursuance of the order dated 06.12.2022 in Criminal Misc. Case No. 1374/2021 in between Anisa Begum and others Vs. Munne Shah as well as quash the recovery warrant and arrest warrant dated 17.12.2025 whereby further against the applicant recovery warrant and arrest warrant have been issued by the Additional Principal Judge, Family Court, Budaun, arising out of the proceedings under Section 128 Cr.P.C./125(3) Cr.P.C., pending in the Court of Additional Principal Judge, Family Court, Budaun, be quashed and set aside.*"

3. It is submitted by learned Counsel for the applicant that his marriage was solemnized with opposite party no.2 and opposite party nos.3 to 5 are their children. She filed an application under Section 125 Cr.P.C., the same was decided by the judgment and order dated 27.09.2021. Thereafter, opposite party no.2 filed an application under Section 128 Cr.P.C., the same was registered as Misc. Case No. 1374 of 2021, in which, by the impugned order dated 17.12.2025, the Family Court has issued recovery warrant and arrest warrant whereas arrest warrant and recovery warrant cannot be issued simultaneously. Learned counsel for the applicant, relying upon the decision of the Supreme Court in **Rajnesh vs.**

Neha & Another (2021) 2 SCC 324, contends that the orders for maintenance can be enforced in view of the specific statutory provisions as well as the directions given by the Supreme Court in **Rajnesh** (supra).

4. *Per contra*, learned A.G.A. has submitted that the Family Court has not committed any illegality in passing the impugned order, therefore, this application may be dismissed.

5. As per the fact of this case, marriage of applicant was solemnized with opposite party no.2 and opposite party nos.3 to 5 were born out of their wedlock. The opposite party no.2 filed an application under Section 125 Cr.P.C., the same was decided by the judgment and order dated 27.09.2021 and the applicant was directed to pay Rs. 3,000/- per month in favour of opposite party no.2 and Rs. 1,000/- each in favour of opposite party nos. 3 to 5. Thereafter, opposite party no.2 filed an application under Section 128 Cr.P.C. for recovery of maintenance amount. Learned Counsel for the applicant has annexed photocopy of the proceedings of the learned Family Court with the present applicant. As per the proceedings, notices were issued against the applicant. Thereafter, recovery warrant and arrest warrant were issued against the applicants on 01.04.2023. The applicant deposited Rs. 15,000/- and was released on bail. Thereafter, the applicant paid certain amount on 03.05.2023. Thereafter, he did not appear before the Court and on 16.11.2023, he was arrested and sent to jail and further released on bail. Thereafter, he did not appear before the Court. On 01.08.2025, the applicant was again arrested and released on bail. Thereafter, by the impugned order dated 17.12.2025, the Family Court issued recovery warrant as well as arrest warrant and also send a letter to the SSP. The simultaneous issuance of warrants for recovery and arrest is not contemplated under the Code of Criminal Procedure. Even the directions given by the Supreme Court do not contemplate any such practice, as has been adopted in the present case.

6. Since, as stated above, no arrest warrant can be issued for recovery of arrears of maintenance, this application is **allowed**. The impugned order dated 17.12.2025, passed by the learned Additional Principal Judge, Family Court, Budaun in Criminal Misc. Case No. 1374/2021, Anisa Begum and others Vs. Munne Shah, Under Section 128 Cr.P.C., Police Station Ujhani, District Budaun is, thus, **set aside**. The matter is remitted back to the

Additional Principal Judge, Family Court, Budaun to decide the application for enforcement of the order of maintenance strictly in accordance with the statutory provisions and the directions given by the Supreme Court in **Rajnesh** (supra).

(Chawan Prakash,J.)

April 1, 2026
Vijay

Digitally signed by :-
VIJAY KUMAR SAHU
High Court of Judicature at Allahabad