



2026:AHC:65947

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 52218 of 2025

Yogendra

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Avinash Kumar Singh, Subodh Pandey
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 for quashing the impugned order dated 13.09.2023 passed under Section 127 Cr.P.C., the recovery warrant dated 03.01.2024 and recovery warrant and arrest warrant dated 01.04.2024 passed by the learned Additional Principal Judge, Family Court, Court No.3 Deoria in Execution CAse No. 1371 of 2023, Sheela v. Yogendra, under Section 128 Cr.P.C. as well as the entire proceedings of the abovementioned execution case.
3. It is submitted by learned Counsel for the applicant that his marriage was solemnized with opposite party no.2. She filed an application under Section 125 Cr.P.C., the same was decided by the learned Court and the applicant was directed to pay Rs. 800/- per month in favour opposite party no.2 and Rs. 500 in favour of opposite party no.3. Thereafter, opposite party no.2 filed an application under Section 127 Cr.P.C., the same was decided vide judgment and order dated 13.09.2023 and the maintenance awarded earlier was enhanced to Rs. 5,000/- in favour of opposite party no.2 and Rs. 3,000/- in favour of opposite party no.3. It is further that the learned family Court has not considered the fact of this case and enhanced the maintenance amount against the evidence, therefore, the order dated 13.09.2023 is liable to be set-aside.
4. It is further submitted that opposite party no.2 has filed an application under Section 128 Cr.P.C., the same was registered as Execution Case

No. 1371 of 2022 in which the Family Court has issued a recovery warrant and arrest warrant whereas arrest warrant and recovery warrant cannot be issued simultaneously. Moreover, the applicant is ready to join the proceedings before the Family Court, therefore, the order regarding recovery warrant and arrest warrant may be set-aside.

5. 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.

6. As per the fact of this case, marriage of applicant was solemnized with opposite party no.2. She filed an application under Section 125 Cr.P.C., the same was decided by the learned Court and the applicant was directed to pay Rs. 800/- per month in favour opposite party no.2 and Rs. 500 in favour of opposite party no.3. Thereafter, opposite party no.2 filed an application under Section 127 Cr.P.C., the same was decided vide judgment and order dated 13.09.2023 and the maintenance awarded earlier was enhanced to Rs. 5,000/- in favour of opposite party no.2 and Rs. 3,000/- in favour of opposite party no.3.

7. As per para no.2 of the judgment, notices were received by the applicant. He appeared before the Trial Court and filed recall application on 17.05.2023 thereafter, he did not turn up and the learned Family Court has decided the case ex-parte on 13.09.2023. A perusal of the said order shows that the learned Family Court has given the detailed reasoning in passing the impugned order and the learned Family Court has not committed any illegality in passing the impugned order.

8. Thereafter, opposite party no.2 filed an application under Section 128 Cr.P.C., the same was registered as Execution Case No. 1371 of 2022. The order sheet of the aforesaid case is annexed at page nos. 24 to 28 of this application. A perusal of order-sheet shows that the learned Family Court has issued recovery warrant and arrest warrant vide order dated 01.04.2024 whereas, arrest warrant and recovery warrant cannot be issued simultaneously as per the provisions of law. Therefore, the order dated 01.04.2024 is set-aside.

9. The applicant is directed to appear before the concerned Family Court

within three weeks and the learned Family Court will proceed with the matter as per law. Till three weeks from today or the date of appearance of the applicant before the learned Family Court, whichever is earlier, no coercive action shall be taken against the applicant.

10. In case the applicant did not appear before the Family Court within three weeks from today, the learned Family Court will be at liberty to proceed with the matter as per provision of law.

11. With the aforesaid direction, this application is **disposed of**.

12. Let this order be communicated to the learned Family Court concerned.

(Chawan Prakash,J.)

March 30, 2026

Vijay