



2026:AHC:152860

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1552 of 2026

A.F.R.

Reserved on : 27.05.2026

Delivered on : 24.07.2026

Judgment uploaded on : 24.07.2026

Mala Kumari

.....Revisionist(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Revisionist(s)	: Kalpna Upadhyay, P.k. Upadhyay
Counsel for Opposite Party(s)	: G.A.

Court No. - 86

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Shri P.K. Upadhyay, learned counsel for the revisionist and Shri Mayank Awasthi, learned State Counsel.
2. None appears on behalf of opposite party No.2. However, notice has been served upon opposite party No.2 as per the report of the Chief Judicial Magistrate, Ghazipur dated 01.05.2026 as well as the report of the Chief Judicial Magistrate, Jaunpur dated 06.05.2026.
3. This Court, vide order dated 13.04.2026, issued notice to the opposite party No.2 (husband) to appear in person or through counsel to file counter affidavit and also sought explanation from the Presiding Officer of the concerned court and directed that the same be furnished by the next date, i.e., on 28.04.2026 on the facts as mentioned in the order. The relevant portion of order dated 13.04.2026 passed by this Court is delineated below:-

"1. Heard Sri P.K. Upadhyay, learned counsel for the revisionist and Sri Shashidhar Pandey, learned A.G.A. for the State. Supplementary affidavit filed on behalf of the revisionist is taken on record.

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 graciously be pleased to allow the present criminal revision and set aside the impugned judgment and order dated 06.12.2025 and 27.01.2026 Passed by Additional Principal Judge-I, Family Court, Jaunpur, in Misc. Case no. 641 of 2025 (Mala Kumari Vs. Anand Kunwar) filed under section 147 B.N.S.S., whereby learned Additional Principal Judge Family Court-I, Jaunpur has dismissed the case,

It is further prayed that this Hon'ble Court may graciously be pleased to direct the opposite party no. 2 to pay the maintenance of Rs. 5,000/- w.e.f. April 2025 an onwards month to month to the revisionist pursuant to the order dated 04.03.2023 passed by Ld. Additional Principal Judge Family Court-I, Jaunpur in case no. 416 of 2018 (Mala Kumari Vs. Anand Kunwar) under section 125 Cr.P.C., during the pendency of the present criminal revision."

3. Learned counsel for the revisionist submits that wife/revisionist filed an application under Section 125 Cr.P.C. on 11.05.2018 seeking grant of maintenance amount from her husband/O.P. No.2. He further submits that the application under section 125 Cr.P.C. has been decided on merits providing opportunity of hearing to both the parties vide order dated 04.03.2023 whereby O.P. No.2/husband has been directed to pay ₹5000/- per month to his wife/revisionist from the date of application i.e. 11.05.2018. The operative part of the order dated 04.03.2023 is being pasted below :-

मामले के तथ्यों व परिस्थितियों, उभय पक्षों के अंकित बयानों एवं उपरोक्त विवेचना के आधार पर यह स्पष्ट है कि सायला विपक्षी की विवाहिता पत्नी है। सायला जारता की स्थिति में नहीं रह रही है और न ही उभय पक्ष की आपसी सहमति के आधार पर अपने पति से अलग रह रही है। सायला पर्याप्त एवं उचित कारणों से अपने पति से अलग न्यास कर रही है। विपक्षी की ओर से ऐसा कोई साक्ष्य पत्रावली में दाखिल नहीं किया गया है, जिससे यह स्पष्ट होता हो कि सायला अपना भरण पोषण स्वयं से करने में समर्थ है। विपक्षी का अपनी पत्नी सायला के भरण पोषण का नैतिक तथा विधिक दायित्व है।

अतः प्रस्तुत मामले के तथ्यों एवं परिस्थितियों और उभय पक्षों की आर्थिक एवं सामाजिक स्थिति के दृष्टिगत सायला को 5,000/-रु0 प्रतिमाह की दर से विपक्षी से भरण-पोषण धनराशि दिलाया जाना न्यायोचित प्रतीत होता है।

माननीय उच्चतम न्यायालय द्वारा फौजदारी अपील रजनीश प्रति नेहा (2021) 2 SCC 324 में पारित सम्मानित आदेश दिनांकित-04.11.2020 में यह मत व्यक्त किया गया है कि भरण-पोषण की धनराशि प्रार्थनापत्र प्रस्तुत करने के दिनांक से प्रदान की जायेगी। अतः सायला को भरण-पोषण की धनराशि प्रार्थनापत्र प्रस्तुत करने के दिनांक से दिलाया जाना न्यायोचित होगा। अतः सायला का प्रार्थना पत्र अन्तर्गत धारा-125 द0प्र0सं0 आदेश-125 से स्वीकार किये जाने योग्य है।

आदेश

प्रार्थना पत्र सायला अन्तर्गत धारा-125 द0प्र0सं0 आदेश-125 से स्वीकार किया जाता है। विपक्षी को आदेशित किया जाता है कि वह सायला को 5,000/-रु0 (पांच हजार रु0) प्रतिमाह की दर से भरण-पोषण की धनराशि वाद दाखिल करने की तिथि दिनांक-11.05.2018 से अदा करे। यदि वाद दाखिल करने की तिथि से आदेश पारित होने की तिथि तक की बचत भरण-पोषण की धनराशि विपक्षी समान छः मासिक किस्तों में अदा करे। भरण-पोषण की धनराशि प्रत्येक माह की 10 तारीख तक देय होगी। यदि कोई भरण पोषण धनराशि पूर्व में दी जा रही है तो वह इसमें समायोजित की जा सकेगी।

दिनांक-04.03.2023

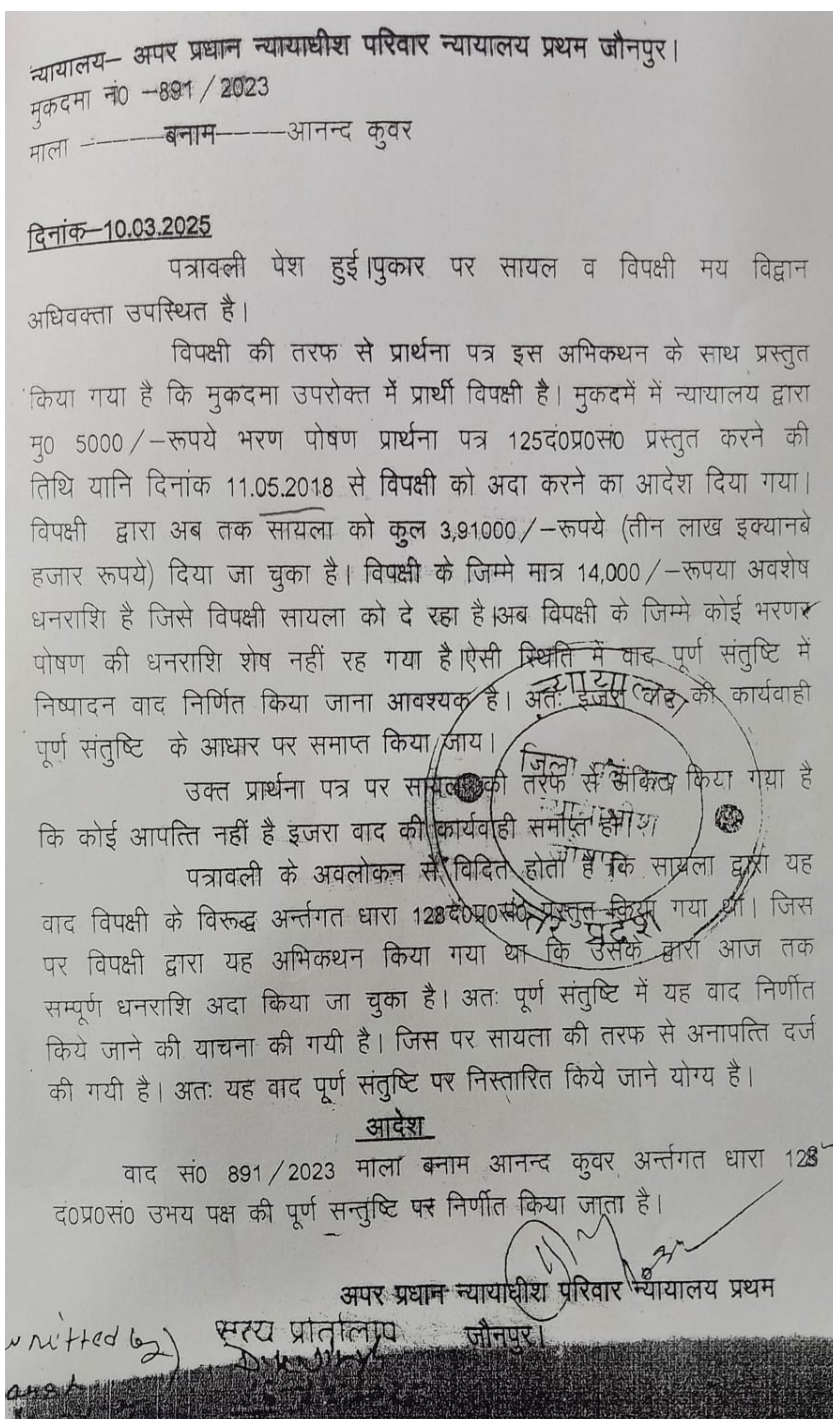
(विजय कुमार गुप्ता-1)
अपर प्रधान न्यायाधीश, परिवार न्यायालय, प्रथम जौनपुर।

आज यह निर्णय व आदेश मेरे द्वारा खुले न्यायालय में हस्ताक्षरित एवं दिनांकित करके सुनाया गया।

दिनांक-04.03.2023

(विजय कुमार गुप्ता-1)
अपर प्रधान न्यायाधीश, परिवार न्यायालय, प्रथम जौनपुर।

4. *Learned counsel for the revisionist further submits that for execution of order dated 04.03.2023, the revisionist filed an application under Section 128 Cr.P.C. on 13.04.2023, which was numbered as Case no.891 of 2023 (Mala vs. Anand Kunwar) and same was finally adjudicated vide order dated 10.03.2025, as husband of the revisionist has deposited the amount of maintenance and in the order dated 10.03.2025, it was mentioned that the entire arrears of the maintenance amount upto February, 2025 has been paid by O.P. No.2/husband. The order dated 10.03.2025 passed by Additional Principal Judge Ist, Family Court, Jaunpur is being pasted below :-*



5. *Learned counsel for the revisionist further submits that the entire amount of arrears of maintenance upto February, 2025 was paid by O.P. No.2/husband and thereafter the Additional Principal Judge Ist, Family Court, Jaunpur vide order dated 10.03.2025, has disposed of the application filed under Section 128 Cr.P.C. but for*

continuous payment of maintenance amount i.e. ₹5000/- per month as well as for arrears for the month of March, 2025, the revisionist has filed another application under Section 128 Cr.P.C./147 BNSS on 09.04.2025, which was numbered as Case no.641 of 2025. The application dated 09.04.2025 is delineated below :-

याद सं० 641 / 2025

माला कुमारी उ०त० 34 वर्ष पत्नी आनन्द कुँवर सा०मौ०-विज्ञवल, पोस्ट-नेवादा,
थाना-खानपुर, तहसील-सैदपुर, जिला गाजीपुर। हालपता-पुत्री राजवन्त
सा०मौ०-सुल्तानपुर, पोस्ट अमिहित, पर० व तह० व थाना केराकत, जिला-जौनपुर।
मोबाईल नं०-8004590726 सायला

बनाम

आनन्द कुँवर उ०त० 38 वर्ष पुत्र रामफल सा०मौ०-विज्ञवल, पोस्ट-नेवादा,
थाना-खानपुर, तहसील-सैदपुर, जिला-गाजीपुर।
.....विपक्षी

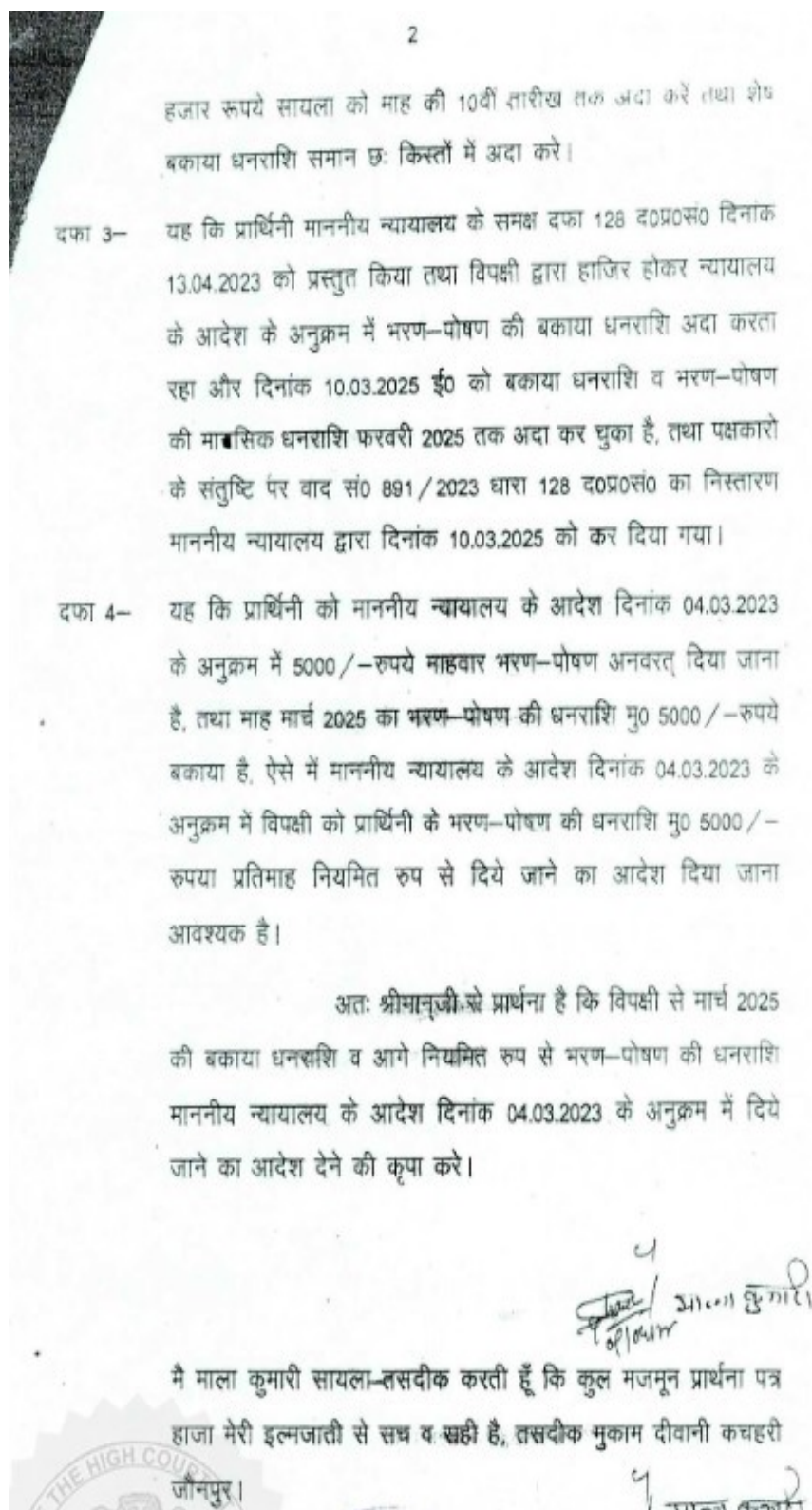
 प्रार्थना पत्र अन्तर्गत धारा 147 बी०एन०एस०एस०
थाना-केराकत, जिला-जौनपुर।

श्रीमान्जी,

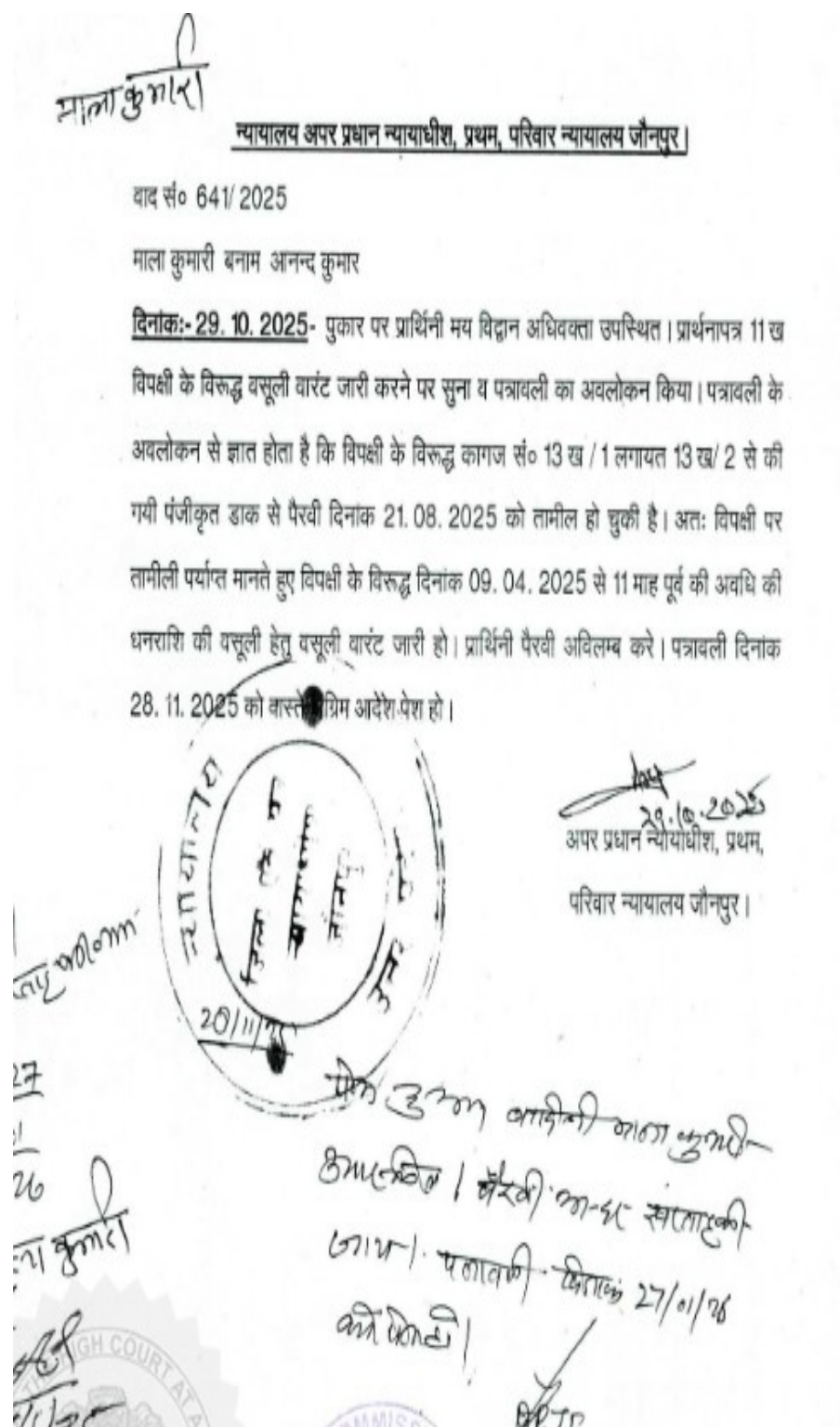
प्रार्थिनी निम्नलिखित निवेदन करती है-

दफा 1- यह कि प्रार्थिनी ने विपक्षी के विरुद्ध धारा 125 सी०आर०पी०सी० के तहत दिनांक 11.05.2018 को माननीय न्यायालय के समक्ष भरण पोषण हेतु वाद प्रस्तुत किया और मुकदमें को कन्टेस्ट करती रही।

दफा 2- यह कि विपक्षी तमाम पैरवी के उपरान्त मुकदमें में उपस्थित आया और अपना जवाबदावा प्रस्तुत कर अपना पक्ष रखा तथा दोनों पक्षों के बयान व जिरह व दोनों पक्षों की बहस सुनने के उपरान्त माननीय न्यायालय अपर प्रधान न्यायाधीश परिवार न्यायालय प्रथम जौनपुर, द्वारा दिनांक 04.03.2023 ई० को विपक्षी के विरुद्ध आदेश पारित करते हुए कहा कि विपक्षी 125 द०आ०पी०सी० के अन्तर्गत प्रार्थना पत्र प्रस्तुत करने के दिनांक से 5



6. Learned counsel for the revisionist further submits that on the application dated 09.04.2025, which has been filed just in the next month of the order dated 10.03.2025, the Additional Principal Judge Ist, Family Court, Jaunpur has passed order of recovery warrant on 29.10.2025 against O.P. No.2/husband, for eleven months to comply with the order dated 04.03.2023 by which the concerned Family court has directed O.P. No.2 to pay amount of ₹5000/- per month to his wife/revisionist as maintenance. For ready reference order dated 29.10.2025 is being pasted hereinbelow :-



7. Learned counsel for the revisionist further submits that thereafter vide order dated 06.12.2025, the Additional Principal Judge Ist, Family Court, Jaunpur has modified the order dated 29.10.2025 as O.P. No.2 has deposited ₹5000/-, which was arrear of maintenance amount for the month of March, 2025 and the recovery warrant issued vide order dated 29.10.2025 for rest of the months was withdrawn by the Additional Principal Judge Ist, Family Court, Jaunpur, without giving any reason, while arrears of the maintenance amount upto 29.10.2025 i.e. ₹55000/- was already due. For ready reference order dated 06.12.2025 is being pasted below :-

न्यायालय अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय, जौनपुर।

वाद सं० 641/2025

माला कुमारी बनाम आनन्द कुंवर

दिनांक: 06.12.2025 - विपक्षी आनन्द कुंवर द्वारा प्रार्थनापत्र 16 ख, आधार कार्ड की छायाप्रति व वकालतनामा प्रस्तुत करने पर पत्रावली पेश हुई। पुकार पर विपक्षी मय विद्वान अधिवक्ता उपस्थित। विपक्षी द्वारा प्रार्थनापत्र 16 ख में यह कथन किया गया है कि उसने 10.03.2025 तक सम्पूर्ण धनराशि प्रार्थिनी को अदा कर दी है और पूर्ण संतुष्टि पर उसका वाद निरस्त हो चुका है। प्रार्थिनी अब पुनः दिनांक 09.04.2025 को एक माह के भरण-पोषण की धनराशि के बाबत वाद दाखिल किया है और वह 5000/- रु० माननीय प्रधान न्यायाधीश, परिवार न्यायालय, जौनपुर के खाते में जमा करना चाहता है।

प्रार्थनापत्र पर सुना व पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से ज्ञात होता है कि प्रार्थिनी का प्रार्थनापत्र 3 क अंधारा 147 बीएनएसएस दिनांक 09.04.2025 को दाखिल किया और माह मार्च 2025 की बकाया धनराशि मु० 5000/- रु० दिलाये जाने का अनुरोध किया है तथा पैरा 03 में यह कथन किया है कि माह फरवरी 2025 तक धनराशि अदा होने पर उसका वाद दिनांक 10.03.2025 को पूर्ण संतुष्टि पर निस्तारित हो चुका है। चूंकि दिनांक 29.10.2025 को ब्रिटिश 11 माह की धनराशि वसूली हेतु आदेश हुआ है, आज दिनांक 06.12.2025 को विपक्षी द्वारा मु० 5000/- रु० जमा करने की अनुमति चाही गयी है। ऐसी स्थिति में विपक्षी के विरुद्ध अन्य कोई धनराशि वसूली हेतु शेष नहीं है। अतः विपक्षी को मु० 5000/- रु० माननीय प्रधान न्यायाधीश, परिवार न्यायालय, जौनपुर के खाते में जमा करने की अनुमति प्रदान की जाती है। विपक्षी द्वारा जमा की गयी धनराशि की रसीद दाखिल न करने पर मु० 5000/- रु० की वसूली हेतु, वसूली वारंट जारी हो और यदि विपक्षी द्वारा 5000/- रु० की धनराशि जमा कर दी जाती है तो विपक्षी के विरुद्ध यदि कोई वारंट जारी हो, तो थाने से अदम तामील वापस मंगाया जाये। लिपिक अनुपालन करे। पत्रावली नियत दिनांक (27.01.2026) को वास्ते अग्रिम आदेश पेश हो।

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अपर प्रधान न्यायाधीश, प्रथम,
परिवार न्यायालय जौनपुर।



मुख्य प्रांतोत्पाद
11-11-2025

8. Learned counsel for the revisionist further submits that by application dated 09.04.2025 filed under Section 128 Cr.P.C./147 BNSS, the revisionist made prayer for continuance of the maintenance from April, 2025 and onwards as well as for arrears of maintenance for the month of March, 2025, but the Additional Principal Judge Ist, Family Court, Jaunpur vide order dated 27.01.2026 taking plea of Section 144(3) Proviso of BNSS (corresponding Section 125(3) Cr.P.C.) has rejected the application dated 09.04.2025 mentioning that O.P. No.2 has deposited ₹5000/- (i.e. arrear of March, 2025) in the account of the Principal Judge, Family Court, Jaunpur and its receipt has been provided to the court of Additional Principal Judge Ist, Family Court, Jaunpur, therefore, the entire amount has been received by the revisionist and the record of the maintenance case of the revisionist has been consigned to record and by doing the same against the provisions of law, the Additional Principal Judge Ist, Family Court, Jaunpur has also recalled the order dated 04.03.2023 by which O.P. No.2/husband was directed to pay ₹5000/- per

month to his wife/revisionist towards maintenance, therefore, the order dated 27.01.2026 is against the provisions of law. For ready reference, the order dated 27.01.2026 is being pasted below :-

न्यायालय अपर प्रधान न्यायाधीश, प्रथम, परिवार न्यायालय, जौनपुर।
मु०नं० 641/2025
UPJP02-001069-2025

माला कुमारी बनाम आनन्द कुंवर

दिनांक:-27.01.2026-पुकार पर प्रार्थिनी मय विद्वान अधिवक्ता उपस्थित। प्रार्थिनी के विद्वान अधिवक्ता द्वारा प्रार्थनापत्र 20 ख व वकालतनामा 21 ख प्रस्तुत किया गया।

प्रार्थनापत्र 20 ख व 3 क, अं०धारा 147 बीएनएसएस दिनांकित 09.04.2025 पर सुना व पत्रावली का अवलोकन करने से ज्ञात होता है कि प्रार्थिनी ने प्रार्थनापत्र 3 क के पैरा 04 में यह अनुरोध किया है कि न्यायालय के आदेश दिनांक 04.03.2023 के अनुकरण में 5000/-रु० माहवार भरण-पोषण अनवरत दिया जाना है तथा माह मार्च 2025 का भरण पोषण मु० 5000/-रु० बकाया है और अनुतोष में विपक्षी से माह मार्च 2025 की बकाया धनराशि 5000/-रु० व आगे नियमित रूप से भरण-पोषण की धनराशि दिलाये जाने का अनुरोध किया है तथा प्रार्थनापत्र 20 ख में विपक्षी के विरुद्ध 55000/-रु० बकाया होने का कथन करते हुए 55000/-रु० की वसूली की बाबत वसूली वारंट जारी किये जाने का अनुरोध किया है।

पत्रावली पर कागज सं० 7 ख/1 लगायत 7 ख/2 वाद सं० 891/2023, माला बनाम आनन्द कुंवर में दिनांक 10.03.2025 को पारित आदेश की संतुष्टिलिपि का अवलोकन करने से ज्ञात होता है कि न्यायालय द्वारा दिनांक 10.03.2025 को प्रार्थिनी का वाद सं० 891/2023 पूर्ण संतुष्टि में निर्णीत हो चुका है तथा प्रार्थनापत्र 3 क में प्रार्थिनी ने माह मार्च 2025 की 5000/-रु० की धनराशि दिलाये जाने का अनुरोध किया है और जहाँ तक नियमित रूप से भविष्य के लिए प्रत्येक माह की धनराशि दिलाये जाने का सम्बन्ध है, न्यायालय द्वारा बीएनएसएस की धारा 144, उपधारा 3 के परन्तुक के अनुसार "परन्तु इस धारा के अधीन देय किसी रकम की वसूली के लिए कोई वारंट तब तक जारी न किया जाएगा जब तक उस रकम को उद्घूहीत करने के लिए, उस तारीख से जिसका वह देय हुई, एक वर्ष की अवधि के अंदर न्यायालय से आवेदन नहीं किया गया है।"

पत्रावली के अवलोकन से ज्ञात होता है कि दिनांक 06.12.2025 को विपक्षी आनन्द कुंवर द्वारा कागज सं० 19 ख पर आदेश दिनांक 06.12.2025 के अनुपालन में 5000/-रु० माननीय प्रधान न्यायाधीश परिवार न्यायालय जौनपुर के खाते में जमा कर रसीद पत्रावली पर दाखिल की गयी है।

इस प्रकार प्रार्थिनी प्रार्थनापत्र में वर्णित धनराशि प्राप्त कर चुकी है। अतः प्रार्थिनी का प्रार्थनापत्र पूर्ण संतुष्टि में खारिज किये जाने योग्य है।

आदेश

प्रार्थिनी माला कुमारी का प्रार्थनापत्र 3 क, अं०धारा 147 बीएनएसएस, मु० 5000/-रु० प्राप्त करने के कारण पूर्ण संतुष्टि में खारिज किया जाता है। पत्रावली नियमानुसार दाखिल दफ्तर हो। लिपिक अनुपालन करे।

27.01.2026
अपर प्रधान न्यायाधीश, प्रथम,
परिवार न्यायालय जौनपुर।

9. *Learned counsel for the revisionist further submits that in Section 144(3) Proviso of BNSS/125(3) Proviso of Cr.P.C., it has only been 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”. He further submits that the application was moved which was after one month on 09.04.2025 and the amount of maintenance has been cleared till February, 2025 and the same has been observed in the order dated 10.03.2025 passed by the Principal Judge, Family Court, Jaunpur. For ready reference the first proviso of Section 144(3) as well as Section 125(3) are being delineated below :-*

First Proviso of Section 144 (3) BNSS

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:

First Proviso of Section 125(3) Cr.P.C.

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:

10. *The matter requires consideration.*

11. *Issue notice to O.P. No.2 returnable at early date through concerned Chief Judicial Magistrate. Steps be taken within three days.*

12. *Two weeks' time is granted to the opposite parties for filing counter affidavit. ”*

4. On 28.04.2026, no one appeared on behalf of opposite party No.2 (husband), nor any report with regard to the service of notice was submitted by the learned Chief Judicial Magistrate. The explanation furnished by the Presiding Officer was also found to be unsatisfactory, therefore, the Presiding Officer was again directed to furnish his

explanation by 08.05.2026. The relevant portion of the order dated 28.04.2026 passed by this Court is delineated below:-

"1. This Court, vide order dated 13.04.2026, issued notice to Opposite Party No. 2 through the Chief Judicial Magistrate, Jaunpur. However, no report has been submitted by the Chief Judicial Magistrate, Jaunpur till date.

2. Further, the explanation furnished by the Presiding Officer, namely Sri Vimal Prakash Arya, Additional Principal Judge, 1st Family Court, Jaunpur, is found to be unsatisfactory, inasmuch as this Court, in its order dated 13.04.2026 (paragraph no. 19), had specifically directed him to submit his explanation as to whether the amount of maintenance granted vide order dated 04.03.2023 has been closed finally and whether wife has to claim maintenance amount again and again in future by moving an application and for every time she has to move an application for execution of the order dated 04.03.2023.

3. It is further noted that the application dated 09.04.2025 filed by the revisionist, whereby payment of continuous maintenance from the month of April, 2025 onwards was sought to be ensured from Opposite Party No. 2, has also not been properly addressed.

4. Upon perusal of the explanation submitted by the Presiding Officer, this Court finds that no clear-cut reply has been given, and the Presiding Officer has taken an erroneous plea of the proviso to Section 144(3) of the BNSS (corresponding to the proviso to Section 125(3) Cr.P.C.), though the law laid down by Hon'ble the Supreme Court and this Court is otherwise.

*5. This Court in **Mohammad Usman Alias Bhai Lal Vs. State of U.P. and 6 Others, 2021 SCC OnLine All 640**, relying upon the decision of Hon'ble the Supreme Court in **Shanta Alias Ushadevi and another vs. B.G. Shivananjappa, (2005) 4 SCC 468** has observed that it is unreasonable to insist on filing successive applications. The relevant observation made in the judgment is quoted herein below for ready reference :-*

*"15. In **Shantha Alias Ushadevi And Another v. B. G. Shivananjappa, (2005) 4 SCC 468**, it was stated that Section 125 of the Code is a measure of social legislation and accordingly, is to be construed liberally for the welfare and benefit of the wife and the children. In the context of the provisions contained under Section 125(3), first proviso, prescribing limitation of one year to seek recovery of arrears of maintenance, it was observed that the liability to pay the maintenance as per the orders passed under Section 125(1) being a continuing liability, it was unreasonable to insist on filing successive applications. The relevant observations made in the judgement are as follows:-*

"8. ... Section 125 Cr.P.C. is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability."

*16. The provisions contained under Section 125(3) of the Code and the first proviso thereto again came up for consideration in **Poongodi And Another v. Thangavel, (2013) 10 SCC 618**, and it was held that the first proviso to Section 125(3) does not create any bar or fetter on claiming arrears of maintenance and it neither extinguishes nor limits entitlement to arrears of maintenance. It was stated thus:-*

"4. A reading of the order dated 21.4.2004 passed by the High Court would go to show that the proviso to Section 125(3) CrPC has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application under Section 125(3) CrPC. Having considered the said provision of the Code we do not find that the same creates a bar or in any way affects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section 125(3) CrPC, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the Court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. However, in such a situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available."

*32. Taking a similar view it was held in **Mackinnon Mackenzie & Co. Ltd vs Audrey D'Costa & Anr.**, (1987) 2 SCC 469, that the proviso does not travel beyond the provision to which it is a proviso and its ambit cannot be stretched beyond the main provision.*

8. The ambit and scope of the powers to be exercised under Section 125(3) of the Code and the question as to whether the limitation prescribed under proviso to Section 125(3) would be applicable in respect of proceedings under Section 128 of the Code, fall for consideration in the present case.

38. Applying the aforesaid principles of statutory construction, the proviso to sub-section (3) of Section 125 would have to be held to be confined to the section which precedes it. The limitation of one year provided in terms thereof would have to be read in relation to issuance of a warrant for recovery of an amount due in terms of an order of maintenance passed under sub-section (1) of Section 125. The aforesaid limitation of one year under the proviso to Section 125 (3) cannot be held to travel beyond or stretch to an extent so as to being within its ambit the powers relating to enforcement of an order of maintenance under Section 128 of the Code.

39. It may, therefore, be deduced that the scope of Section 125(3) and 128 of the Code being different and the first proviso to Section 125(3) creating an interdict only on issuance of warrant for recovery under Section 125(3), the said period of limitation of one year cannot be held to create a fetter on the right to claim enforcement under Section 128.

40. The proceeding for enforcement of the order under Section 128, therefore, cannot be assailed on the ground that the same would be barred by limitation as provided under the proviso to Section 125(3) of the Code.

emphasis supplied"

6. In view of the aforesaid legal position, Sri Vimal Prakash Arya, Additional Principal Judge, 1st Family Court, Jaunpur, is directed to submit a clear and specific explanation addressing the issues raised by this Court in respect of successive applications to execute the order of maintenance as continuous liability.

7. The Chief Judicial Magistrate, Jaunpur, is also directed to submit a report as to whether the order dated 13.04.2026 as well as notice has been communicated to the Opposite Party No. 2 or not."

5. Upon receiving explanation from the Presiding Officer, to the effect that the maintenance order dated 04.03.2023 is still operative, this Court passed the order dated 11.05.2026. The order dated 11.05.2026 is delineated below:-

"1. In compliance of this Court's order dated 28.04.2026, the concerned Presiding Officer has submitted an explanation mentioning therein that the order of maintenance dated 04.03.2023 and the order dated 10.03.2025 passed in application under Section 128 Cr.P.C. are still effective. Paragraph 1 and 2 of the explanation are being quoted below :-

"01. यह कि, जहाँ तक वाद सं० 416/2018, माला कुमारी बनाम आनन्द कुंवर, अंधारा 125 दंडप्र०सं० में पारित आदेश दिनांक 04.03.2023 का सम्बन्ध है, इस सम्बन्ध में अधोहस्ताक्षरी का निवेदन निम्नवत् है-

(i). यह कि उपरोक्त आदेश वर्तमान में प्रभावी है और जब तक सक्षम अधिकारिता वाले न्यायालय द्वारा निरस्त नहीं कर दिया जाता तब तक उक्त आदेश सदैव प्रभावी रहेगा।

(ii). यह कि भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 146 में वर्णित उपबंधों के साबित होने पर भरण-पोषण का आदेश रद्द या परिवर्तित हो सकता है।

02. यह कि, वाद सं० 416/2018, माला कुमारी बनाम आनन्द कुंवर, अंधारा 125 दंडप्र०सं० में पारित आदेश दिनांक 04.03.2023, अधोहस्ताक्षरी के न्यायालय द्वारा वाद सं० 891/2023, माला कुमारी बनाम आनन्द कुंवर, अन्तर्गत धारा 128 दंड प्रक्रिया संहिता में पारित आदेश दिनांक 10.03.2025 के अनुसार निरस्त नहीं हुआ है और आदेश दिनांकित 04.03.2023 वर्तमान में भी प्रभावी है।"

2. Further, this Court vide order dated 13.04.2026 issued notice to O.P. No.2 through the Chief Judicial Magistrate, Ghazipur for filing counter affidavit as well as vide order dated 28.04.2026, the concerned C.J.M. was directed to submit report whether notice has been communicated to O.P. No.2 or not. As per office report dated 07.05.2026, "Notice served upon O.P. No.2 as per C.J.M. Ghazipur".

3. As a last opportunity, one week's further time is granted to O.P. No.2 for filing counter affidavit, otherwise on the next date this case shall be heard on merits as per the available record.

4. List this case on 18.05.2026 as fresh."

6. As per the office report dated 07.05.2026, the notice has been served upon the opposite party No.2 (husband) even then, after effective service of notice, no one appeared on behalf of opposite party No.2 to press this case, therefore, this Court granted another opportunity vide

order dated 18.05.2026. The order dated 18.05.2026 is delineated below:-

"As per the Office Report dated 07.05.2026, based on the report of the Chief Judicial Magistrate, Ghazipur, notice had already been served upon opposite party no.2. Accordingly, this Court, vide order dated 11.05.2026, granted last opportunity to opposite party no.2 to file counter affidavit. However, till date, no counter affidavit has been filed.

Put up this case as fresh on 27.05.2026, peremptorily. "

7. Despite the aforesaid orders of the Court, no one appeared to file counter affidavit in the matter, therefore, this Court, on the basis of the available record, submissions advanced by learned counsel for the revisionist as well as in view of the law laid down by the Hon'ble Courts, proceeds to pass the final order in the present matter.

8. Learned counsel for the revisionist submitted that, on 11.05.2018, the revisionist (wife) filed an application under Section 125 Cr.P.C., seeking the grant of maintenance from opposite party No.2 (husband). After providing an opportunity of hearing to both the parties, the concerned Family Court vide order dated 04.03.2023, directed opposite party No.2 to pay Rs. 5,000/- as maintenance to the revisionist from the date of application i.e. 11.05.2018.

9. Learned counsel for the revisionist further submitted that, for execution of the aforesaid maintenance order dated 04.03.2023, the revisionist filed an application under Section 128 Cr.P.C. on 13.04.2023, which was registered as Execution Case No.891 of 2023 and the same was finally adjudicated vide order dated 10.03.2025, observing that the entire arrears of maintenance up to February, 2025 had been paid by opposite party No.2, thereafter, the proceedings under Section 128 Cr.P.C. was disposed of.

For ready reference, the relevant operative portion of the order dated 10.03.2025 passed by the Family Court on the first execution application as well as provisions of Section 128 Cr.P.C. (corresponding Section 147 B.N.S.S.) are delineated below respectively:-

"पत्रावली के अवलोकन से विदित होती है कि सायला द्वारा यह वाद विपक्षी के विरुद्ध अन्तर्गत धारा 128 दंडप्रसं प्रस्तुत किया गया था। जिस पर विपक्षी द्वारा यह अभिकथन किया गया था कि उसके द्वारा आज तक सम्पूर्ण धनराशि अदा किया जा चुका है। अतः पूर्ण संतुष्टि में यह वाद निर्णीत किये जाने की याचना की गयी है। जिस पर सायला की तरफ से अनापत्ति दर्ज की गयी है। अतः यह वाद पूर्ण संतुष्टि पर निस्तारित किये जाने योग्य है।

आदेश

वाद सं० 891/2023 माला बनाम आनन्द कुवर अन्तर्गत धारा 128 दंडप्रसं उभय पक्ष की पूर्ण संतुष्टि पर निर्णीत किया जाता है।"

XXXX

"Section 128 Cr.P.C/147 BNSS. Enforcement of order of maintenance: A copy of the order of [maintenance or interim maintenance and expenses of proceeding, as the case may be,] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to [whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the [allowance or as the case may be, expenses, due.]"

10. Learned counsel for the revisionist further submitted that, after disposal of the earlier execution proceedings, the revisionist filed another execution application in the next month on 09.04.2025, under Section 128 Cr.P.C./147 B.N.S.S. seeking regular payment of maintenance from April, 2025 onwards, as well as arrears of maintenance for the month of March, 2025. The said application was registered as Execution Case No.641 of 2025. He also submitted that the said application was filed immediately after the disposal of the earlier execution case in the same maintenance proceedings and there was no delay on the part of the revisionist in approaching the concerned Family Court for enforcement of the maintenance order dated 04.03.2023. The relevant portion of second execution application dated 09.04.2025 is delineated below:

"यह कि प्रार्थिनी को माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में 5000/- रुपये माहवार भरण-पोषण अनवरत् दिया जाना है, तथा माह मार्च 2025 का भरण-पोषण की धनराशि मु० 5000/- रुपये बकाया है, ऐसे में माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में विपक्षी को प्रार्थिनी के भरण-पोषण की धनराशि मु० 5000/-रुपया प्रतिमाह नियमित रुप से दिये जाने का आदेश दिया जाना आवश्यक है।

अतः श्रीमान्जी से प्रार्थना है कि विपक्षी से मार्च 2025 की बकाया धनराशि व आगे नियमित रूप से भरण-पोषण की धनराशि माननीय न्यायालय के आदेश दिनांक 04.03.2023 के अनुक्रम में दिये जाने का आदेश देने की कृपा करे।”

11. Learned counsel for the revisionist further submitted that, on the aforesaid execution application dated 09.04.2025, the Additional Principal Judge-Ist, Family Court, Jaunpur vide order dated 29.10.2025 issued recovery warrant for eleven months' arrears of maintenance against opposite party No.2 in compliance with the maintenance order dated 04.03.2023. He further submitted that thereafter, vide the order dated 06.12.2025, the concerned Family Court withdrew the recovery warrant merely on the ground that opposite party No.2 had deposited Rs. 5,000/- towards the arrears for the month of March 2025, but wrong notion was mentioned in the said order about the arrears amounting to Rs. 55,000/-, which were still due against him till the date of passing of the recovery order, and thus, the cause of action is still continuing and the maintenance order is still in operation. The relevant portion of second execution order dated 06.12.2025 is being delineated below:

“पत्रावली के अवलोकन से ज्ञात होता है कि प्रार्थिनी का प्रार्थनापत्र 3 क अंधारा 147 बीएनएसएस दिनांक 09.04.2025 को दाखिल किया और माह मार्च 2025 की बकाया धनराशि मु० 5000/-रु० दिलाये जाने का अनुरोध किया है तथा पैरा 03 में यह कथन किया है कि माह फरवरी 2025 तक धनराशि अदा होने पर उसका वाद दिनांक 10.03.2025 को पूर्ण संतुष्टि पर निस्तारित हो चुका है। चूंकि दिनांक 29.10.2025 को त्रुटिवश 11 माह की धनराशि वसूली हेतु आदेश हुआ है, आज दिनांक 06.12.2025 को विपक्षी द्वारा मु० 5000/- रु० जमा करने की अनुमति चाही गयी है। ऐसी स्थिति में विपक्षी के विरुद्ध अन्य कोई धनराशि वसूली हेतु शेष नहीं है। अतः विपक्षी को मु० 5000/-रु० माननीय प्रधान न्यायाधीश, परिवार न्यायालय, जौनपुर के खाते में जमा करने की अनुमति प्रदान की जाती है। विपक्षी द्वारा जमा की गयी धनराशि की रसीद दाखिल न करने पर मु० 5000/-रु० की वसूली हेतु, वसूली वारंट जारी हो और यदि विपक्षी द्वारा 5000/- रु० की धनराशि जमा कर दी जाती है तो विपक्षी के विरुद्ध यदि कोई वारंट जारी हो, तो थाने से अदम तामील वापस मंगाया जाये। लिपिक अनुपालन करे। पत्रावली नियत दिनांक (27.01.2026) को वास्ते अग्रिम आदेश पेश हो।”

12. Learned counsel for the revisionist further submitted that, thereafter, vide the impugned order dated 27.01.2026, the Additional Principal Judge-Ist, Family Court, Jaunpur rejected the application dated 09.04.2025 taking recourse to the proviso to Section 144(3) B.N.S.S./ Section 125(3) Cr.P.C., mentioning therein that opposite party No.2 had deposited Rs. 5,000/- in the account of the Principal Judge, Family

Court, Jaunpur and accordingly, the second application of execution was rejected and the case filed was also consigned to the record room. He further submitted that, by passing the aforesaid order, the concerned Family Court practically nullified the effect of maintenance order dated 04.03.2023, despite the fact that the said order was still in existence and had never been recalled or set aside by any competent court and having continuous effect under Section 144(3) BNSS/Section 125(3) Cr.P.C. He further submitted that the impugned order is contrary to the provision of Section 144(3) BNSS/125(3) Cr.P.C.

For ready reference, the relevant portion of the order dated 27.01.2026 as well as provisions of Section 144(3) B.N.S.S. (corresponding Section 125(3) Cr.P.C.) are delineated below respectively:-

“ पत्रावली के अवलोकन से ज्ञात होता है कि दिनांक 06.12.2025 को विपक्षी आनन्द कुंवर द्वारा कागज सं० 19 ख पर आदेश दिनांक 06.12.2025 के अनुपालन में 5000/-रु० माननीय प्रधान न्यायाधीश परिवार न्यायालय जौनपुर के खाते में जमा कर रसीद पत्रावली पर दाखिल की गयी है।

इस प्रकार प्रार्थिनी प्रार्थनापत्र में वर्णित धनराशि प्राप्त कर चुकी है। अतः प्रार्थिनी का प्रार्थनापत्र पूर्ण संतुष्टि में खारिज किये जाने योग्य है।

आदेश

प्रार्थिनी माला कुमारी का प्रार्थनापत्र 3 क, अंधारा 147 बीएनएसएस, मु० 5000/-रु० प्राप्त करने के कारण पूर्ण संतुष्टि में खारिज किया जाता है। पत्रावली नियमानुसार दाखिल दफ्तर हो। लिपिक अनुपालन करे।”

XXXXX

“Section 144(3) BNSS/125(3) Cr.P.C- 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.”

13. Learned counsel for the revisionist further submitted that proviso to Section 144(3) B.N.S.S./ Section 125(3) Cr.P.C. only restricts the issuance of a warrant for recovery after the prescribed limitation period has elapsed; it does not extinguish the right of the wife to claim due maintenance, nor does it bar the enforcement mechanism available under Section 128 Cr.P.C./ Section 147 B.N.S.S. He further submitted that the revisionist approached the court promptly, and the provisions of law had been wrongly interpreted while rejecting the application filed by the revisionist. In support of his submissions, he relied upon paragraph No. 4 of the judgment in **Poongodi And Another v. Thangavel, (2013) 10 SCC 618** passed by the Hon’ble Supreme Court. The relevant paragraph of the judgment is delineated below:-

*"4. A reading of the order dated 21.4.2004 passed by the High Court would go to show that the proviso to Section 125(3) CrPC has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application under Section 125(3) CrPC. **Having considered the said provision of the Code we do not find that the same creates a bar or in any way affects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section 125(3) CrPC, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the Court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. However, in such a situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available.**"*

(emphasis added)

14. Shri Mayank Awasthi, learned State Counsel assisted the Court and submitted that the maintenance order dated 04.03.2023, passed in favour of the revisionist, is still operative and so long as it stands, opposite party No.2 is under a continuous legal obligation to pay the monthly maintenance amount to the revisionist.

15. This Court has considered the submissions advanced by learned counsel for the revisionist, as well as learned State Counsel and, has also perused the record.

16. From a perusal of the record, it transpires that the maintenance order dated 04.03.2023, passed under Section 125 Cr.P.C. remains operative, for the enforcement of which, the revisionist had earlier instituted proceedings under Section 128 Cr.P.C. that were finally decided vide the order dated 10.03.2025 upon payment of the maintenance arrears. Subsequently, the revisionist moved another execution application dated 09.04.2025 under Section 128 Cr.P.C./ Section 147 B.N.S.S. seeking payment of maintenance for the month of March 2025, as well as future maintenance.

17. Vide the impugned order dated 27.01.2026, the learned Additional Principal Judge-I, Family Court, Jaunpur, recorded a finding that since the maintenance amount for March, 2025 had already been deposited by opposite party No.2 (husband), no outstanding amount remained due in respect thereof. Furthermore, regarding the prayer for future maintenance, the Family Court, while passing the impugned order, observed that a recovery warrant cannot be issued for future monthly maintenance amounts that have not yet become due on the date of filing of the application and has taken note of the provisions contained in Section 144(3) B.N.S.S./Section 125(3) Cr.P.C. but the Hon'ble Supreme Court and High Court have observed in several judgments that successive execution applications are not required to be filed. This issue has also been considered by the coordinate Bench of this Court in **Mohammad Usman Alias Bhai Lal Vs. State of U.P. and 6 Others, 2021 SCC OnLine All 640**. The Hon'ble Supreme Court in the case of **Shantha Alias Ushadevi and another Vs. B.G. Shivananjappa; (2005) 4 SCC 468**, has also observed that it would be unreasonable to insist upon the filing of successive applications. The relevant observations made in **Shantha Alias Ushadevi** (supra) are delineated below for ready reference:-

"8. We are, therefore, of the view that in the peculiar circumstances of the case, the bar under Section 125(3) cannot be applied and the High Court has erred in reversing the order of Sessions Judge. It must be borne in mind that Section 125 Criminal Procedure Code is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay

the maintenance as per the order passed under Section 125(1) is a continuing liability.”

(emphasis added)

18. The provisions of Section 125(3) Cr.P.C. and its first proviso have also been considered by the Hon’ble Supreme Court in the case of **Poongodi And Another v. Thangavel, (2013) 10 SCC 618**, wherein the Hon’ble Supreme Court observed that the first proviso to Section 125(3) Cr.P.C. does not prevent a person entitled to maintenance from claiming arrears of maintenance for a period beyond one year. The period of one year provided in the first proviso only limits the procedure for the recovery of maintenance under Section 125(3) Cr.P.C. by the issuance of a warrant for the recovery of the amount, and the detention of the defaulter in custody does not extinguish the right of the claimant to recover the arrears of maintenance.

19. The Hon’ble Supreme Court in the case of **Aarti Rai vs. Satish Rai and others** arising out of **Criminal Appeal No.1074 of 2025** vide order dated 04.03.2025 has directed the counsel for the appellant to supply the account details of the appellant-wife to the respondent so that the amount of maintenance can be directly deposited in the bank account of the appellant. The relevant paragraph of the said judgment is delineated below:-

“The learned counsel appearing for the appellant shall supply account details of the appellant to the learned counsel appearing for the first respondent so that the amount of maintenance can be directly deposited in the bank account of the appellant.”

20. The Hon’ble Supreme Court in the case of **Dimpal Vs. Nishant Pravinbhai Soni** arising out of **Transfer Petition (Civil) No. 3147 of 2024**, vide order dated 27.02.2026, has also directed the employer of respondent-husband to deduct the amount of maintenance from the salary of the respondent-husband and the same shall be transferred in the bank account of the applicant-wife. The relevant observations made in paragraph No.7 of **Dimpal** (supra) are quoted hereinbelow for ready reference:-

“7. In such circumstances, we are left with no other option but to direct the employer of the respondent-husband, namely, Rishad Shipping and Clearing Agency Pvt. Ltd., referred to above, that an amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) shall be deducted per month from the salary of Nishant Praveenbhai Soni and the said amount shall be transferred by RTGS to the account of his wife, namely, Dimpal Soni.”

(emphasis added)

21. In the present case, it cannot be ignored that the maintenance order dated 04.03.2023 continues to remain in force and the opposite party No.2 (husband) remains under an obligation to pay maintenance to the revisionist.

22. Accordingly, opposite party No.2-husband is directed to clear the arrears of maintenance, if any, till today and shall continue to pay the monthly maintenance amount to the revisionist-wife in compliance with the order dated 04.03.2023 passed by learned Additional Principal Judge Family Court-I, Jaunpur in case no. 416 of 2018 (Mala Kumari Vs. Anand Kunwar) under section 125 Cr.P.C., preferably into her verified bank account, if provided by the Revisionist-Wife of opposite party No.2(Husband).

23. All the Presiding Officers of the Family Courts and Gram Nyayalayas of the State of U.P. are directed to ensure strict compliance with the following directions:

(i) The trial court shall follow the law laid down by the Hon'ble Supreme Court in *Shanta Alias Ushadevi (supra)* to the effect that successive execution applications are not required to be filed for receiving monthly maintenance.

(ii) The trial court shall also follow the law laid down by the Hon'ble Supreme Court in *Poongodi (supra)* to the effect, that the first proviso to Section 125(3) Cr.P.C./Section 144(3) B.N.S.S. does not create any bar or affect upon the

entitlement of a claimants to recover arrears of maintenance beyond a period of one year.

(iii) While passing or executing maintenance orders, the trial court shall direct the opposite party/person, liable to pay maintenance, to deposit the monthly maintenance amount directly into the verified bank account of the applicant-claimant, in terms of the law laid down by the Hon'ble Supreme Court in *Aarti Rai (supra)*.

(iv) Wherever the opposite party is in salaried employment, the trial court shall also direct the concerned department/employer to deduct the maintenance or arrears from the salary/remuneration/honorarium of the opposite party-employee and transfer the same directly into the verified bank account of the applicant-claimant, in accordance with the law laid down by the Hon'ble Supreme Court in *Dimple (supra)*.

(v) In the event of refusal of payment of maintenance or non-payment of maintenance due to insufficiency of funds, the trial court shall recover the amount by attaching the property of the opposite party/person, liable to pay maintenance, in accordance with law and if the attached property is insufficient to clear the unpaid arrears of maintenance, an order of simple imprisonment may be directed to be executed for a term which may extend to one month for each month's default or until payment, if sooner made, as per Section 125(3) Cr.P.C./Section 144(3) B.N.S.S.; and the law laid down by the Hon'ble Supreme Court in *Rajnish vs. Neha; (2021) 2 SCC 324*.

24. The above directions, as given by the Hon'ble Apex Court as well as this Court, if not complied with in letter and spirit by the Presiding Officers of the Family Courts, as well as the Gram Nyayalayas of the

State of U.P., the same is liable to attract disciplinary, as well as contempt proceedings as per law.

25. For execution of the maintenance order, the District Administration as well as the Police Authorities are directed to cooperate in the matter and this issue shall also be discussed in the Monitoring Cell meetings conducted by all the District and Sessions Judges of the State of U.P.

26. With the aforesaid directions, the revision stands **disposed of**.

27. The Registrar (Compliance) is directed to communicate this order to the District and Session Judge, Jaunpur and the Principal Judge, Family Court, Jaunpur for its compliance as well as to transmit a copy of this order to the Judicial Training and Research Institute, U.P. Lucknow (JTRI), for the academic purposes of the judicial officers.

(Praveen Kumar Giri,J.)

July 24, 2026

K.Tiwari