



2026:AHC:10500

AFR

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### APPLICATION U/S 528 BNSS No. - 39747 of 2025

Mohammad Shahzad

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite  
Party(s)

Counsel for Applicant(s)

: Kuldeep Kumar

Counsel for Opposite Party(s)

: G.A.

#### Court No. - 80

**HON'BLE RAJIV LOCHAN SHUKLA, J.**

1. This application under Section 528 B.N.S.S. has been filed by the applicant for quashing the order dated 25.09.2025 passed by Additional Principal Judge, Family Court, Court No.2, Aligarh in Misc. Case No.548 of 2024 (Smt. Shajiya Khan & Another vs. Mohammad Shahzad) under Section 128 of the Code of Criminal Procedure (*hereinafter referred to as "Cr.P.C."*) , Police Station - Banna Devi, District Aligarh, whereby the Additional Principal Judge has issued recovery/arrest warrants against the applicant to recover arrears of maintenance against the applicant passed in Maintenance Case No.1111 of 2017 (Smt. Shajiya Khan & Anr. vs. Mohammad Shahzad) under Section 125 Cr.P.C.
2. Heard Sri Kuldeep Kumar, learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.
3. Learned counsel for the applicant states that pursuant to an order passed against the applicant under Section 125 Cr.P.C., in proceedings under Section 128 Cr.P.C., recovery and arrest warrants have been issued against the applicant. 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. Learned A.G.A. has contended that this Court, vide order dated

25.04.2024 passed in Criminal Revision No. 1235 of 2024, had granted protection to the applicant, subject to the condition that he shall pay Rs. 10,000/- per month to the opposite party No. 2 and Rs. 5,000/- per month to the opposite party No. 3. This Court had further directed the applicant to pay 50% of the arrears of maintenance within a period of one month, and the remaining 50% of the arrears of maintenance was directed to be paid to the opposite parties No.2 and 3 in three equal monthly installments commencing from 25th June, 2024. It was further directed that, in case of default in the said payments, the Principal Judge would be at liberty to recover the arrears along with 10% interest. Learned A.G.A. states that as the directions of the High Court have been violated, the impugned order has rightly been passed issuing recovery warrants against the applicant. Learned A.G.A., however, states that there was nothing in the order of the High Court to indicate that the arrest of the applicant would be effected to recover the arrears of maintenance. Learned A.G.A. also does not dispute the fact that no arrest warrants can be issued for recovery of arrears of maintenance under Sections 125(3) and 128 Cr.P.C. He states that the maintenance orders can be enforced in view of the directions given by the Supreme Court in the decision of **Rajnesh (supra)**, referred to above.

5. In view of the order that is being proposed to be passed, no notices are being issued to opposite parties No. 2 and 3.

6. The Supreme Court, in the case of **Rajnesh (supra)**, in paragraph 132, has given the following directions with respect to the enforcement/execution of orders of maintenance:

***"(e) Enforcement/Execution of orders of maintenance***

***132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, 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 CPC, more particularly Sections 51, 55, 58, 60 read with Order 21."***

7. Section 125(3) Cr.P.C. provides the manner in which a warrant for the recovery of the maintenance amount may be issued. Section 125(3) Cr.P.C. reads as under:

*"125(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 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."*

8. A perusal of the provision, quoted above, clearly indicates that recovery of the arrears of maintenance can be made in the manner provided for levying fines. The procedure for issuance of warrant for levy of fine has been given under Section 421 Cr.P.C., which are quoted herein below:

**"421. Warrant for levy of fine.-**(1) When an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) issue a warrant to the collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter;

*Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it*

*necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.*

*(2) The State Government may make rules regulating the manner in which warrants under clause (a) of Sub-Section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.*

*(3) Where the Court issues a warrant to the Collector under clause (b) of Sub-Section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law;*

***Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.*** [emphasis added]

9. A perusal of the above mentioned provisions would clearly indicate that for recovery of maintenance amount, a warrant is to be issued, which is to be executed in the manner provided for under Section 421 Cr.P.C. and a perusal of Section 421 Cr.P.C. indicates that no warrant of arrest can be issued. It is only on failure to deposit the amount or arrears remaining after execution of the warrant, that imprisonment can be awarded.

10. Section 125(3) Cr.P.C. clearly indicates that efforts are to be made, *first*, to recover the arrears of maintenance/enforce the order of maintenance in the manner provided for levying fines, and if the warrant is not executed or is partially executed, the Court may sentence the person, directed to pay the maintenance amount, to imprisonment for the whole or any part of each month's allowance for maintenance, interim maintenance, or expenses of proceedings, as the case may be, which remain unpaid after the execution of the recovery warrant. Thus, 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.

11. This Court has observed in a number of cases that orders are being passed by the Family Courts issuing warrants of arrest along with recovery warrants and in some cases issuing non-bailable warrants. This is clearly against specific statutory provisions and the directions given by the Supreme Court in the case of **Rajnesh (supra)**. This practice must stop and the recovery of arrears of maintenance is to be made in the manner prescribed

by the statute or not at all.

12. Section 125(3) Cr.P.C. itself contemplates that cause can be shown by the person against whom order of maintenance has been passed for not complying with the order, as the opening lines of Section 125(3) Cr.P.C. state that "*If any person so ordered fails without sufficient cause to comply with the order.....*". Thus, sufficient cause can be shown for non-payment of the amount. The procedure for enforcement of orders of maintenance/interim maintenance ought to be of first issuance of notice to the person ordered to pay maintenance. Thereafter, if sufficient cause is not shown, warrants for recovery can be issued in the manner provided for levying fines. The procedure, as indicated in the judgment of the Supreme Court in **Rajnesh (supra)**, may then be followed. Any other procedure for recovery of arrears of maintenance, which has not been provided for under Sections 125(3) and 421 Cr.P.C., and paragraph 132 of the judgment of the Supreme Court in **Rajnesh (supra)**, is not to be resorted to.

13. The Family Courts Act, 1984 (*hereinafter called as "Act of 1984"*), also provides for the procedure, which is to be followed by the Family Courts in deciding proceedings before it. Section 10 of the Act of 1984, provides as under :

**"10. Procedure generally.—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.**

**(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.**

**(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."**

14. Even though, sub-section (3) of Section 10 of the Act of 1984 gives

liberty to the Family Court in laying down its own procedure but the same is restricted to arriving at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other. Nothing in the Act of 1984 empowers the Family Court to curtail the liberty of an individual except in the manner provided for in the Code of Criminal Procedure or the Code of Civil Procedure, as the case may be.

15. Section 18 of the Act of 1984 provides for execution of decrees and orders. Section 18 of the Act of 1984 is reproduced herein below:

**"18. Execution of decrees and orders.—(1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.**

**(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.**

**(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."**

16. Section 18(2) of the Act of 1984 clearly provides that an order passed by a Family Court under Chapter IX of the Cr.P.C. shall be executed in the manner provided for the execution of such order by the Code of Criminal Procedure. Thus, a perusal of the provisions, enumerated above, and the directions given by the Supreme Court leave no room for doubt that for enforcement of an order of maintenance, warrants of arrest cannot be issued. Liberty of an individual can be curtailed only in the manner prescribed by law and not otherwise.

17. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 21 is sacrosanct and forms the basic structure of our Constitution. The fundamental right, so granted to an individual, cannot in any manner, be abridged except in the manner provided for by the law and not on a misunderstanding of the law by the Courts.

18. In the opinion of this Court, the act of issuance of arrest warrants is not merely a misinterpretation of the law laid down by the Supreme Court and the statutory law itself, but, is an act of overstepping its jurisdiction by the Family Court, which is absolutely illegal.

19. A person who is liable to pay maintenance is not to be treated as a person who has committed a crime. His personal dignity and liberty cannot be trampled with by the Courts in their excessive enthusiasm in enforcement of orders of maintenance, even if they come to a finding that there has been a deliberate non-payment of arrears of maintenance pursuant to an order of Court. The Courts must keep in mind that every individual must be treated with dignity that befits his status as a free citizen of the country. The manner in which arrest warrants are routinely issued is not only illegal but also inhumane, as it tramples upon the dignity of an individual who is subjected to arrest and produced before the Court as if he were accused of a crime.

20. The orders of the Supreme Court in **Rajnesh (supra)** have been duly communicated to all Courts, and any violation of the same cannot be allowed to go unchecked.

21. Another issue, which has been raised during arguments before this Court regarding execution of the orders of maintenance in the manner provided for the execution of money decrees as laid down by the Supreme Court in **Rajnesh (supra)**. The learned counsel for the applicant, relying upon the directions given in paragraph 132, contends that procedure under Section 125(3) Cr.P.C. ought not be followed, but, the provisions of the Code of Civil Procedure specifically Sections 51, 55, 58 and 60 read with Order XXI C.P.C. have to be followed.

22. As indicated above, the provisions of the Act of 1984 clearly indicate that for proceedings under Chapter IX of the Code of Criminal Procedure, the provisions of the Code of Criminal Procedure shall be followed.

23. The Uttar Pradesh Family Courts (Court) Rules, 2006 (*hereinafter referred to as "U.P. Family Court Rules"*), in Chapter VIII, provide for the execution of orders of the Family Court. For ready reference, Chapter VIII of the U.P. Family Court Rules, are reproduced hereinbelow:

*"35. Execution of Orders.- The provisions of Code of Civil Procedure for execution of orders passed in all matters except the orders passed on*

*petition under Chapter IX of Code of Criminal Procedure shall apply. The provisions of execution of orders in Code of Criminal Procedure shall apply to orders passed under Chapter IX of the Code of Criminal Procedure.*

**36.** *An order passed under Chapter IX of the Code of Criminal Procedure for maintenance allowance may be executed by the Court by attachment of salary as provided in section 60 and order 21 of the Code of Civil Procedure in addition to the mode of recovery provided in subsection (3) of Section 125 of the said Code.*

**37.** *An application under Section 125/126 under Chapter VII of the Code of Criminal Procedure may be filed at the place where the wife, minor child, parent, as the case may be resides.*

**38.** *The pendency of an application for interim maintenance under Section 125 or 126 as the case may be under Chapter IX of the Code of Criminal Procedure shall not be a ground to stay or suspend the main proceedings under Section 125 or 126 of the Code.*

**39.** *In the pending execution proceeding for recovery of any defaulted amount the Family Courts shall not register a new case. An application for recovery of defaulted amount of maintenance in the pending execution case shall be sufficient for recovering the amount."*

24. A perusal of Rule 36, quoted above, shows that the procedure prescribed under the Code of Civil Procedure specifically for attachment of salary under Section 60 and Order XXI of the Code of Civil Procedure is in addition to the mode of recovery provided in sub-section (3) of Section 125 Cr.P.C. Thus, it leaves no room for doubt that the procedure, which is to be followed for recovery of arrears of maintenance in proceedings under Section 125 Cr.P.C., is as given under Section 125(3) Cr.P.C.

25. The Supreme Court while considering the case of **Rajnesh (supra)**, was not only dealing with award of maintenance/enforcement of maintenance orders only under the Code of Criminal Procedure but also under other laws. To interpret the directions of the Supreme Court in the manner, as is being suggested by the learned counsel for the applicant, would be incorrect. The Supreme Court, in paragraph No.132 of the directions given has used the word 'may' and the same has been done taking into account the various provisions under which maintenance can be sought by an aggrieved person.

26. Thus, it is no doubt true that the U.P. Family Court Rules provide for

attachment of salary as provided in Section 60 and Order XXI of the Code of Civil Procedure; however, the same is only in addition to the regular mode of recovery provided under the Code of Criminal Procedure. Furthermore, Rule 36 provides for the attachment of salary, as provided under Section 60 and Order XXI of the Code of Civil Procedure and would not apply to cases where the person against whom the order of maintenance is to be enforced is not receiving salary.

27. In the opinion of the Court, the provisions of Rule 36 of the U.P. Family Court Rules, Section 60 C.P.C. and Order XXI of C.P.C., when read together, leave no room for doubt that the same would apply only to salaries, as provided under Rule 48 and 48-A of Order XXI of the Code of Civil Procedure. The entire chapter for execution of decrees cannot be made applicable as the Code of Criminal Procedure is quite exhaustive when it comes to the manner of recovery of arrears of maintenance /enforcement of orders of maintenance. The provisions of the Code of Civil Procedure specifically Section 60 and Order XXI have been provided under Rule 36 in addition to the regular modes of recovery for salaried professions. Thus, the contention of the applicant that the recovery can be made only by invoking the provisions of the Code of Civil Procedure, that too, with respect to the execution of money decrees is not in consonance with the directions given by the Supreme Court, the Family Courts Act and Rules and the Code of Criminal Procedure.

28. As stated above, no arrest warrant can be issued for recovery of arrears of maintenance, this application is **allowed**. The impugned order dated 25.09.2025 passed by Additional Principal Judge, Family Court, Court No.2, Aligarh in Misc. Case No.548 of 2024 (Smt. Shajia Khan & Another vs. Mohd. Shahzad) under Section 128 Cr.P.C., Police Station - Banna Devi, District Aligarh is, thus, set aside. The matter is remitted back to the Additional Principal Judge, Family Court, Court No. 2, Aligarh, 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)**.

**January 16, 2026**  
Kushal

**(Rajiv Lochan Shukla,J.)**