03
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 1781/2026 CM(4750/2026)

Shishir Gupta IAS Presently Posted As District Collector Shopian.

...Applicant(s)/Petitioner(s)

Through: Mr. Mohsin S Qadri, Senior AAG with
Ms. Rahilla Khan, Assisting Counsel.

VERSUS

Ufaira Gulzar & Ors.

...Respondent(s)

Through: Mr. Bilal Ahmad Malla, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE.

ORDER
07.08.2026

1. The respondents No. 1 and 2 are the wife and daughter of the respondent No. 3.

2. The respondents No. 1 and 2, upon suffering neglect in terms of their maintenance at the hands of the respondent No. 3, invoked proceedings under section 125 of the Code of Criminal Procedure, 1973, which was then in force, on **20.04.2023** before the Court of Judicial Magistrate 1st Class, Shopian.

3. Said petition under section 125 of the Code of Criminal Procedure, 1973 of the respondents No. 1 and 2 against the respondent No. 3 came to be adjudicated upon and finally disposed of in terms of an order dated **04.12.2025** by awarding monthly maintenance of **Rs. 18,000/-** in favour of respondents No. 1 and 2 with **Rs. 10,000/-** payable in favour

of the respondent No. 1 and **Rs. 8,000/-** payable in favour of the respondent No. 2.

4. The award of said monthly maintenance was to take effect from the date of institution of the proceedings which was **20.04.2023.**

5. Aggrieved by the default on the part of the respondent No. 3 in paying the recurring as well as arrears of maintenance in terms of the final order dated **04.12.2025** passed by the Judicial Magistrate 1st Class, Shopian, the respondents No. 1 and 2 came forward with an application for execution of the said final order dated **04.12.2025** and, in this regard, an application came to be filed on **09.12.2025,** i.e., within five days of the passing of final order dated **04.12.2025.**

6. Said application for execution was assigned to the Judicial Magistrate 1st Class, Shopian in which proceedings came to be set into effect, with the respondent No. 3 staying away from participation in the proceedings, obviously to frustrate the respondents No. 1 and 2 from receiving any payment of maintenance from his end.

7. From a perusal of the case file, which this Court has summoned from the Court of Judicial Magistrate 1st Class, Shopian, it is found that from the date of its institution, the

Court kept on issuing notices for service upon the respondent No. 3 and, on all occasions, said notices remained unserved.

8. This Court is surprised that upon finding that service of notice upon the respondent No. 3 was not taking place, recourse to the issuance of bailable/non-bailable warrants under the Code of Criminal Procedure, 1973 was not resorted to by the Judicial Magistrate 1st Class, Shopian, which would have enabled the tracing of the respondent No. 3 and his appearance/production before the Court of the Judicial Magistrate 1st Class, Shopian.

9. Even if the Court of Judicial Magistrate 1st Class, Shopian, omitted to contemplate the issuance of bailable/non-bailable warrants for securing the appearance and presence of the respondent No. 3, still the service of notice ought to have been effected in the manner as provided under sections 61, 62 and 65 of the Code of Criminal Procedure, 1973, which would have possibly ensured service upon the respondent No. 3 and, if not, then to provide a justification for the Court of Judicial Magistrate 1st Class, Shopian, to resort to the issuance of bailable/non-bailable warrants against the respondent No. 3.

10. By virtue of an order dated **20.02.2026,** by abandoning the effort of serving the respondent No. 3, the Court of Judicial Magistrate 1st Class, Shopian, resorted to enforcing the final

order by issuance of a levy warrant to the District Collector, Shopian, for its execution in terms of Section 421 (1) (b) of the Code of Criminal Procedure, 1973.

11. Before this Court proceeds further, it would be in the fitness of perspective to have a quick reference to the legal recourse meant to be followed with respect to the enforcement of an order passed under section 125 of the Code of Criminal Procedure, 1973.

12. Section 125(3), by reference to its two provisos, provides a scope for recovery of the amount by issuance of a warrant for levying the amount as a fine.

13. Section 431 of the Code of Criminal Procedure, 1973 provides that money ordered to be paid shall be recoverable as a fine.

14. Thus, both section 125(3) and section 431 of the Code of Criminal Procedure, 1973 fall back upon section 421 providing for a warrant for levy of fine.

15. Once a warrant for levy of fine for recovery of the amount stands issued to the Collector, the proceedings shift unto the Collector to carry out the recovery proceedings as if arrears of land revenue are to be recovered from the movable or immovable property of the defaulter, and thus, from this stage onwards, the role of the Court or the Judicial Magistrate

having passed the order or issued the warrant for levy of fine comes to a pause.

16. In the present case, after having passed order dated **20.02.2026,** the Court of Judicial Magistrate 1st Class, Shopian, came forward with an order dated **30.04.2026** without reflecting upon as to whether the warrant for levy of fine addressed to the Collector, District Shopian, had been put into effect or not.

17. In terms of the order dated **30.04.2026,** the Judicial Magistrate 1st Class, Shopian, directed the District Collector, Shopian, to furnish a detailed report regarding the movable/immovable properties, if any, standing in the name of the respondent No. 3 and located within the territorial jurisdiction of District Shopian.

18. The report solicited from the District Collector, Shopian, was meant to include extracts of relevant revenue records or any other material reflecting the ownership or possession of assets by the respondent No. 3.

19. Thus, the mandate of order dated **30.04.2026** issued to the District Collector, Shopian, was, by its very nature, a time-consuming exercise for which an instant and immediate response from the District Collector, Shopian, was not to be expected.

20. However, it appears that by **04.06.2026,** the Assistant Commissioner Revenue, Shopian, from the Office of the District Collector, Shopian, came to furnish a detailed report to the Judicial Magistrate 1st Class, Shopian, thereby identifying the immovable property of the respondent No. 3 for the cognizance of the Judicial Magistrate 1st Class, Shopian, to take notice and act upon which this Court is not able to appreciate as to what purpose it would have served the Judicial Magistrate 1st Class, Shopian, when the levy warrant dated **20.02.2026** had already been assigned to the District Collector, Shopian, for carrying out the recovery of the arrears and recurring maintenance amount from the respondent No. 3. Be that as it may.

21. It seems that the Judicial Magistrate 1st Class, Shopian did not approve of forwarding of the report by the Assistant Commissioner Revenue, Shopian, from the Office of the District Collector, Shopian, and, in fact, expected the personal appearance of the District Collector, Shopian, to have taken place for production of requisite report

22. Learned Judicial Magistrate 1st Class, Shopian, took exception to the fact that only immovable property relatable to the respondent No. 3 had been identified without identifying any movable property/ies.

23. By reading the situation from this aspect, a show cause notice dated **10.07.2026** came to be issued by the Judicial Magistrate 1st Class, Shopian, to the District Collector, Shopian, who rushed to this Court by way of the present petition under article 226 read with article 227 of the Constitution of India to question the legality of the very issuance of said show cause notice by the Judicial Magistrate 1st Class, Shopian.

24. When this Court examines the case file, this Court finds that even the Judicial Magistrate 1st Class, Shopian, is found to be acting in ignorance of law as, after having first issued a levy warrant to the Collector, District Shopian, in terms of section 421(1)(b) of the Code of Criminal Procedure, 1973, another levy warrant came to be issued in terms of order dated **04.07.2026** against the respondent No. 3 to be served by SHO, Police Station Shopian, for which there is no scope provided under the Code of Criminal Procedure, 1973, meaning thereby that the Judicial Magistrate 1st Class, Shopian, self-frustrated the earlier levy warrant issued to the Collector, Shopian.

25. Thus, when this Court examines the matter in the light of the totality of facts and circumstances of the present case as obtaining from the case file, this Court is of considered

opinion that the Judicial Magistrate 1st Class, Shopian, has exceeded the jurisdictional bounds of its authority under the Code of Criminal Procedure, 1973, which renders the impugned show cause notice dated **10.07.2026** illegal. Accordingly, the same is set aside.

26. This Court directs the Judicial Magistrate 1st Class, Shopian, to issue a fresh levy warrant addressed to the Collector, Shopian, to carry out its execution by referring to the mode of recovery of arrears of land revenue in terms of section 91 of the Jammu and Kashmir Land Revenue Act, Svt. 1996 and, in that respect, to carry out attachment and sale of the identified ownership property of the respondent No. 3 to realize the proceeds for the purpose of being made available at the disposal of the Judicial Magistrate 1st Class, Shopian, to be paid to the respondents No. 1 and 2.

27. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

SRINAGAR
07.08.2026
Bisma Jan.