



2026:AHC:186567

Reserved on: August 17, 2026

Delivered on : September 8, 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 31390 of 2026

Ishtiyak Ahmad

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Bipin Kumar Rao, Indra Deo Mishra
Counsel for Opposite Party(s) : G.A.

In Chamber

HON'BLE PRASHANT MISHRA-I, J.

1. Heard Mr. Bipin Kumar Rao and Mr. Indra Deo Mishra, learned counsel for the applicant and learned A.G.A. representing the State.

2. The prayer of the applicant in the instant application is quoted herein below:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to set aside the order dated 31.03.2026 passed by Gram Nyayalaya, Machhali shehar, Jaunpur in Case no 40/2023 [Tabassum and Another Versus Ishtiyak and others] Under section 12 of the Protection of Women from Domestic Violence Act, 2005 Relating to Police Station Pawara Distt. Jaunpur.

It is further prayed that this Hon'ble court may also be pleased to stay the effect and operation of order dated 31.03.2026 passed by learned Judge Gram Nyayalaya, Machhalishaher Distt. Jaunpur in Case No 40/2023 [Tabassum and Another Versus Ishtiyak and others] U/s 12 of the Protection of Women from Domestic Violence Act, 2005 relating to P.S. Pawara Distt. Jaunpur till the pendency of this Cr. Misc. Application before this Hon;ble court. Or This Hon'ble court may pass any other order or direction in favour of the applicant which this Hon'ble Court may deem fit and proper on the basis of facts and circumstances of the case."

3. Learned counsel for the applicant has submitted that the Principal Judge, Family Court, Jaunpur, vide an ex parte judgement and order of maintenance dated 14.03.2023 passed against applicant-Ishtiyaq, awarded an amount of Rs. 3000/- per month to his wife/opposite party No. 2 and an amount of Rs. 2000/- per month to opposite party No. 3/daughter, payable from 16.06.2022. It is also submitted by learned counsel for the applicant that vide impugned judgement and order dated 31.03.2026, the applicant was also

directed by the learned trial court to provide one room, kitchen, latrine, bathroom for opposite party No. 2. The applicant was also directed to provide maintenance allowance to the tune of Rs. 2000/- per month to opposite party No. 2 and Rs. 1000/- per month to daughter /opposite party No. 3 and that amount has been awarded to them from 18.06.2022 i.e. from the date of filing of the application. It is further submitted that the learned trial court has committed an error by not adjusting the amount of maintenance earlier awarded and which is in clear violation of the law laid down by the Hon'ble Apex Court in the case of **Rajnesh Vs. Neha and Another, (2021) 2 SCC 324**. Learned trial court by the impugned judgement and order has also directed the applicant to pay an amount of Rs. 40,000/- as compensation to the complainant within two months from the date of the order i.e. 31.03.2026. Learned counsel for the applicant drew the attention of this Court on paragraph Nos. 59, 60 and 128.1 of the case of **Rajnesh Vs. Neha and Another (supra)** which are quoted herein below:

"59. In Sudeep Chaudhary vs. Radha Chaudhary the Supreme Court directed adjustment in a case where the wife had filed an application under Section 125 CrPC, and under HMA. In the Section 125 proceedings, she had obtained an order of maintenance. Subsequently, in proceedings under the HMA, the wife sought alimony. Since the husband failed to pay maintenance awarded, the wife initiated recovery proceedings. The Supreme Court held that the maintenance awarded under Section 125 Cr.P.C. must be adjusted against the amount awarded in the matrimonial proceedings under HMA, and was not to be given over and above the same.

60. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

.....

128.1. (i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceedings(s), while determining whether any further amount is to be awarded in the subsequent proceeding."

4. It is also submitted by learned counsel for the applicant that as per the instructions received from his client a recall of ex-parte judgement and order of maintenance dated 14.03.2023 has been filed before the learned trial court

concerned by the applicant.

5. Learned A.G.A. for the State could not dispute the aforesaid contentions of the learned counsel for the applicants.

6. This Court finds it expedient to hold that, in view of the judgement of the Hon'ble Apex Court in the case of ***Rajnesh Vs. Neha and Another (supra)***, it would be improper to direct the husband to pay maintenance under each of the proceedings independent of the relief granted in previous proceedings.

7. However, the applicant is directed to deposit a sum of Rs. 1,00,000/- (Rupees One Lakh Only) before the court of learned Principal Judge, Family Court, Jaunpur within a period of two weeks from the date of production of certified copy of this order, which shall be released in favour of opposite party No. 2 of the instant application, namely, Tabassum. Learned Principal Judge, Jaunpur is also directed to decide the recall application, if any, filed by the applicant-Ishtiyah Ahmad, against the ex parte judgement and order dated 14.03.2023 passed by the Principal Judge, Family Court, Jaunpur preferably within a period of three months from the date of production of certified copy of this order, after giving an opportunity of hearing to the parties.

8. The applicant and opposite party No. 2 to the instant application are also directed to furnish the details of the legal proceedings to the learned court of Principal Judge, Family Court, Jaunpur, as has been contemplated in the case of ***Rajnesh Vs. Neha and Another (supra)***.

9. Principal Judge, Family Court, Jaunpur is also directed to consider the adjustment of the maintenance etc. awarded in any proceedings arising under the D.V. Act while deciding the maintenance application of opposite party No. 2-Tabassum on merits.

10. In case, the aforesaid recall application filed by the applicant is allowed and the application under Section 125 Cr.P.C. is decided after hearing the parties, then the maintenance awarded under Section 12 of D.V. Act shall be taken into consideration and adjusted against the amount awarded under Section 125 Cr.P.C., in the light of observations made in the case of ***Rajnesh Vs. Neha and Another (supra)***.

11. As regards the impugned judgement and order dated 31.03.2026 passed by the learned Gram Nyayalaya, Machhli Sheher, Jaunpur in Case No. 40/2023, it is found that the amount awarded as compensation and towards other expenses has not been adjusted with the earlier judgment and order passed by the learned Principal Judge, Family Court. Hence, for a period of three months or till disposal of the recall application, whichever is earlier, the effect and operation of aforesaid judgement and order 31.03.2026 passed by Gram Nyayalaya, Machhali Shehar, Jaunpur against the applicant, shall be kept in abeyance.

12. With the aforesaid directions the instant application U/s 528 B.N.S.S. stands **disposed of**.

13. In case, opposite party No. 2 is aggrieved, she is at liberty to approach this Court.

14. Copy of this order be sent to the concerned trial court within 48 hours for necessary information and compliance. Since opposite party No. 2 is not represented before this Court, office is also directed to send the copy of this order to opposite party No. 2 within 48 hours for necessary information and compliance.

(Prashant Mishra-I,J.)

September 8, 2026

Kashifa