2026:AHC:210750

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION DEFECTIVE No. - 1964 of 2026

Rajnish

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Ashish Srivastava
Counsel for Opposite Party(s)	:	G.A.

Court No. - 83

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Learned counsel for the revisionist submits that he has preferred the instant criminal revision along with the delay condonation application as there is delay of 703 days and with the relief which has been mentioned in the prayer clause of the revision.

2. The relief which has been mentioned in the revision is delineated below:-

> *"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present revision and set aside the impugned ex parte judgment and order dated 22-07-2024 passed by learned Principal Judge, Family Court, Shahjahanpur in Criminal Misc. Case No. 280 of 2021 (Smt. Surmila Vs. Rajnish) in proceedings u/s. 125 Cr.P.C. by which Rs. 4,000/-maintenance has been granted to the opposite party no. 2 from the date of filing of Application u/s. 125 Cr.P.C. viz. since 23-07-2021.*
>
> *It is further prayed that this Hon'ble Court may graciously be pleased to stay the effect and operation of the impugned ex parte judgment and order dated 22-07-2024 passed by learned Principal Judge, Family Court, Shahjahanpur in Criminal Misc. Case No. 280 of 2021 (Smt. Surmila Vs. Rajnish) in proceedings u/s. 125 Cr.P.C. by which Rs. 4,000/ maintenance has been granted to the opposite party no. 2 from the date of filing of Application u/s. 125 Cr.P.C. viz. since 23-07-2021 by 5th calendar day of each month from the date of filing of Application u/s. 125*

Cr.P.C. during the pendency of the present revision before this Hon'ble Court or to pass such other and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

3. Learned counsel for the revisionist submits that against the *ex parte* final order dated 22.07.2024 passed under Section 125 Cr.P.C., the present revision has been preferred.

4. Learned counsel for the revisionist submits that the ex parte maintenance order dated 22.07.2024 was not within the knowledge of the revisionist. He further submits that, vide order dated 22.07.2024, the trial court has granted maintenance of Rs. 4,000/- per month to the wife, which is not commensurate with the source of income of the revisionist-husband.

5. Shri Vivek Dubey, learned A.G.A. assisted the Court and submitted that there is a provision under Section 126(2) Cr.P.C./145(2) B.N.S.S. for filing an application for recalling the *ex parte* order and the same can be availed before the trial court, therefore, the revision is liable to be dismissed on the ground of maintainability. For ready reference Section 126 Cr.P.C. is being delineated below :-

"126. ***Procedure.***

(1) Proceedings under section 125 may be taken against any person in any district-

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

> ***Provided that*** *if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.*
>
> *(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just."*

6. Learned A.G.A. further submits that this aspect has already been decided by this Court in **Criminal Revision Defective No.141 of 2026 (Anup Kumar Vs. Smt. Pratibha Kushwaha and others)** vide order dated 30.03.2026 and a coordinate Bench of this Court in **Criminal Revision No.2099 of 2026 (Abhishek Gond vs. State of U.P. and others)** vide order dated 01.04.2026, observed that as per Section 126(2) Cr.P.C., against an *ex parte* order passed in an application under Section 125 Cr.P.C., the remedy available to the revisionist is to move an application under Section Section 126(2) Cr.P.C./ 145(2) B.N.S.S. before the concerned family court.

7. In view of above submission of learned counsel for the parties and also in view of the fact that the reason shown for inordinate delay of 703 days in filing the revision in the supporting affidavit is not found sufficient, the delay condonation application stands dismissed, and accordingly, this revision is dismissed being barred by limitation as well as on the ground of maintainability. However, it is open for the revisionist to avail appropriate remedy in accordance with law, if he is so advised.

(Praveen Kumar Giri,J.)

October 8, 2026
K.Tiwari

Digitally signed by :-
KRISHNA KANT TIWARI
High Court of Judicature at Allahabad