2026:AHC:212573

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 42474 of 2026

Samar Bahadur Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Akhilesh Kumar Dubey
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. This application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed by the applicant with a prayer to quash the order dated 09.09.2026 passed by the learned Additional Principal Judge-I, Family Court, Jaunpur, in Case No. 1612 of 2024 (Suman Yadav v. Samar Bahadur Yadav), under Section 128 Cr.P.C., arising out of Maintenance Case No. 306 of 2019 (Suman Yadav v. Samar Bahadur Yadav), instituted under Section 125 Cr.P.C. against the applicant.

3. Learned counsel for the applicant submits that opposite party no. 2 is the wife of the applicant and, owing to matrimonial disputes, she initiated proceedings under Section 125 Cr.P.C. seeking maintenance, which were allowed vide order dated 16.07.2024. It is further submitted that, for recovery of the maintenance amount, opposite party no. 2 moved an application under Section 147 BNSS before the learned court concerned, pursuant to which recovery warrants as well as an arrest warrant were issued against the applicant by the impugned order dated 09.09.2026. Learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Rajnesh v. Neha and Another*****, (2021) 2 SCC 324**.

4. Learned counsel for the applicant further submits that the impugned order is contrary to the law laid down by the Hon'ble Supreme Court in *Rajnesh v. Neha and Another*, (2021) 2 SCC 324, wherein it was held that an order of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1955, Section 20(6) of the Protection of Women from Domestic Violence Act, 2005, or Section 128 Cr.P.C., as applicable. It was further observed that an order of maintenance may be enforced as a decree of a civil court in accordance with the provisions of the Code of Civil Procedure, 1908, particularly Sections 51, 55, 58 and 60, read with Order XXI thereof.

5. It is further submitted that the impugned order directing recovery of the arrears of maintenance through recovery warrants and an arrest warrant against the applicant was passed without following the procedure prescribed under the Code of Civil Procedure.

6. The matter involves a settled position of law. The only question for consideration is whether the learned court concerned could issue recovery warrants and an arrest warrant for recovery of arrears of maintenance without following the procedure prescribed by law. In view of the settled legal position, the requirement of calling for a counter-affidavit from opposite party no. 2 is dispensed with.

7. In view of the aforesaid facts and circumstances, the application is **partly allowed**, and the impugned order dated 09.09.2026 is hereby **quashed**.

8. It is, however, clarified that the court concerned may proceed to enforce the maintenance order and recover the arrears of maintenance in accordance with the provisions of the Code of Civil Procedure, as applicable, and the law laid down by the Hon'ble Supreme Court in *Rajnesh v. Neha* (supra).

October 9, 2026
RavindraKSingh

(Deepak Verma,J.)

Digitally signed by :-
RAVINDRA KUMAR SINGH
High Court of Judicature at Allahabad