**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL REVISION No. - 6444 of 2026**

Piyush Tripathi

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

| | | |
|---|---|---|
| Counsel for Revisionist(s) | : | Sudhir Kumar Agarwal |
| Counsel for Opposite Party(s) | : | G.A. |

**Court No. - 83**

**HON'BLE PRAVEEN KUMAR GIRI, J.**

1. Mr. Sudhir Kumar Agarwal, learned counsel for the revisionist submits that he has preferred the instant criminal revision 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 sent Revision, summon the lower Court's record and aside the ex parte order dated 07.07.2026 passed by learned Additional Principal Judge, Family Court, Jhansi in Case No. 1130 of 2020, (Smt. Sweta Tripathi Vs. Piyush Tripathi) under Section 125 Cr.P.C..*
>
> *It is further prayed that this Hon'ble Court may also pleased to stay the entire criminal proceeding of Case 1130 of 2020, (Smt. Sweta Tripathi Vs. Piyush Tripathi) under Section 125 Cr.P.C. pending in the Court Additional Principal Judge, Family Court, Jhansi during pendency of present application before this Hon'ble Court otherwise the revisionist shall suffer from irreparable loss injury.*
>
> *And/or pass such other and further order which this 'ble Court may deem fit and proper in the facts and circumstances of the instant case."*

3. Learned counsel for the revisionist submits that against the *ex parte* final order dated 07.07.2026 passed under Section 125 Cr.P.C., the present revision has been preferred.

4. Learned counsel for the revisionist further submits that by the *ex parte* order, the application filed under Section 125 Cr.P.C. was finally allowed. He further submits that there is a provision for filing an application under Section 126(2) Cr.P.C./145(2) B.N.S.S. for recalling the *ex parte* order. Learned counsel for the revisionist further submits that he does not want to press this case on merit and he shall raise all the grievances by filing an application under Section 126(2) Cr.P.C./145(2) B.N.S.S. before the trial court.

5. Shri Pankaj Kumar, 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 within 90 days 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, has also held 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 126(2) Cr.P.C. before the concerned family court.

7. Accordingly, the revision is **dismissed** at this stage on the ground of maintainability as there is an alternative, efficacious remedy available under Section 126(2) Cr.P.C./145(2) B.N.S.S. for filing an application before the trial court and the revisionist is at liberty to avail the said remedy, if so advised.

**(Praveen Kumar Giri,J.)**

**October 24, 2026**
SFH

Digitally signed by :-
SYED FAHIM HUSAIN
High Court of Judicature at Allahabad