



2026:AHC:9997

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 7530 of 2025

Moazzam Ali

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Applicant(s)

: Wahaj Ahmad Siddiqui

Counsel for Opposite Party(s)

: G.A.

Court No. - 80

HON'BLE RAJIV LOCHAN SHUKLA, J.

1. Heard Learned counsel for the applicant, Learned A.G.A. for the State and perused the record.
2. Challenge in this application is to the ex-parte judgment and order dated 04.08.2023 passed under section 127 Cr.P.C. in Criminal Misc. Case No.334 of 2020 passed by Principal Judge Family Court Bhadohi, and entire proceeding initiated under section 128 Cr.P.C. vide Criminal Misc. Case No.540 of 2023 pending in court of Learned Principal Judge, Family Court, Bhadohi.
3. Office report dated 17.6.2025 indicates that notice has been served upon the opposite party Nos.2 & 3 as per the report of the Learned Chief Judicial Magistrate, Bhadohi.
4. The matter is being listed continuously, however, till date no one has put in appearance on behalf of the opposite party Nos.2 & 3 nor has any counter affidavit been filed on behalf of the opposite party Nos.2 & 3. As the notice on the opposite party Nos.2 & 3 has been effected, this Court proceeds to decide the matter without further issuing the notice to the opposite party Nos.2 & 3.
5. Learned counsel for the applicant states that no notice or summons were ever served on the applicant in accordance with the procedure prescribed under the law and an ex-parte order of enhancing the maintenance amount from Rs.1,000/- to Rs.6,000/- for the opposite party

No.2 and from Rs.500/- to Rs. 4,000/- for the opposite party No.3, has been passed.

6. Learned counsel for the applicant states that he is filing a supplementary affidavit annexing therewith the registered cover in which the applicant was sent notice and from the endorsement on the registered cover, it has been found that the addressee lives outside, which would not deem to be sufficient service of notice on the applicant. Learned counsel for the applicant states that in the order dated 24.11.2022, an arbitrary endorsement has been made by the Learned Court that the applicant was deliberately avoiding the summons. Learned counsel for the applicant further states that the quantum of maintenance, which has been enhanced without taking into account the fact that the opposite party No.3 is now major, whose date of birth, as per his birth certificate, annexed as Annexure No.1 is 7.1.2005. As such, he had attained the age of majority on 5.1.2023. Thus, the impugned order dated 4.8.2023 is not only illegal on the ground of the same being *ex-parte* but is also passed on wrong facts, which requires to be set aside by this Court.

7. Learned counsel for the applicant further relies upon an earlier order passed between the parties, whereby the High Court had reduced the maintenance granted by the trial Court taking into account the fact that the opposite party No.2 was living in the house of the applicant and was also running a shop. The order passed by this Court in **Criminal Misc. Writ Petition No.22586 of 2013 (Moazzam Ali Vs. Jahaba Bano & Another)** has been annexed as Annexure No.3 to this application.

8. I have considered the submissions made by the Learned counsel for the applicant.

9. Taking into account the fact that the opposite party No.3 has attained the age of majority before the passing of the order under Section 127 Cr.P.C., as is evident from birth certificate annexed as Annexure No.1 to this application. The impugned order so far as the same relates to the opposite party No.3 is hereby **quashed**. So far as the amount of maintenance enhanced with respect to the opposite party No.2, given the current day and age, the enhancement of the amount of maintenance, does

not appear to be exorbitant. The applicant has also not pleaded that he is not earning and unable to maintain himself. He on the contrary pleads that he is taking care of five children, which have been born from the wedlock and there is an excessive burden on him. The increase of maintenance amount is beyond his capacity. Such submissions of the Learned counsel for the applicant are not supported by any evidence with respect to his sources of income or his current monthly income. I find that the consideration of the Learned Principal Judge with respect to enhancement of the amount of maintenance granted to the opposite party No.2 is just and legal and requires no interference from this Court in its extraordinary jurisdiction under Section 528 B.N.S.S.

10. In such circumstances, the maintenance awarded to the opposite party No.3 is hereby set aside. The applicant shall continue to pay monthly maintenance pursuant to the impugned order dated 4.8.2023. The arrears of maintenance, which have been accrued and as per the Learned counsel for the applicant, no payment consequent to the enhanced amount has been made, shall be paid in 12 equal monthly installments along with the regular maintenance to be paid.

11. With these directions, the applications is *partly allowed*.

(Rajiv Lochan Shukla,J.)

January 14, 2026
Sachin