



2026:AHC:65535

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION DEFECTIVE No. - 141 of 2026

Anup Kumar

.....Revisionist(s)

Versus

Smt Pratibha Kushwaha

.....Opposite
Party(s)

Counsel for Revisionist(s) : Kuldeep Kumar, Ravi Prakash
Chaurasiya

Counsel for Opposite Party(s) : G.A.

Court No. - 87

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Today, Shri Raghvendra Yadav, Advocate has filed his vakalatnama on behalf of the opposite party, the same is taken on record.
2. Learned counsel for the revisionist submits that he has preferred the instant criminal revision along with delay condonation application with the relief which has been mentioned in the prayer clause of the revision.
3. The relief which has been mentioned in the revision is delineated below:-

"A. To Set-a-side the impugned ex-parte judgment and order dated 20.08.2025 came to knowledge on 01.01.2026 and received on 06.01.2026 passed in Crimal Case No. 762/2025 viz; Smt Pratibha Kushwaha Versus Anup Kumar Under Section 144 BNSS 2023 passed by the learned Principal Judge Family Court Jhansi (as contained in Annexure No. 1) be quashed in the interest of justice please.

B. To suspend the operation and execution of the orders impugned dated 20.08.2025 during the pendency of the present Criminal Revision and summon the entire record of the Cri Case No.762 of 2025; viz; Smt Pratibha Kushwaha -Versus- Anup Kumar from the court of learned Principal Judge Family Court Jhansi decided on 20.08.2025 AND the entire record of the pending execution case under section 147 BNSS 2023 Cri Misc Case no. 1471/2025 viz; Smt Pratibha Kushwaha -Versus- Anup Kumar from the court of learned Principal Judge Family Court Jhansi"

4. Learned counsel for the revisionist submits that in the present case, an ex-parte order dated 20.08.2025 under Section 144 B.N.S.S. (corresponding Section 125 Cr.P.C.) has been passed by the Principal Judge, Family Court, Jhansi, whereby the revisionist has been directed to pay maintenance of Rs.30,000/- per month to the opposite party without affording an opportunity of hearing to the revisionist. The operative portion of the order dated 20.08.2025 as well as the provision of Section 144 B.N.S.S. (corresponding Section 125 Cr.P.C.) are delineated below respectively:

"

आदेश

आवेदिका श्रीमती प्रतिभा का प्रार्थनापत्र 3A1 एक पक्षीय रूप से आंशिक रूप से स्वीकार किया जाता है। विपक्षी को आदेशित किया जाता है कि वह आवेदनपत्र प्रस्तुत करने के दिनांक 29-05-2025 से भरण पोषण की धनराशि के रूप में आवेदिका प्रतिभा को 30000/ रू० (तीस हजार रूपया) प्रतिमाह अदा करे।

"

"144. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself; or

(b) his legitimate or illegitimate child, whether married or not, unable to maintain itself; or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself; or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child,

father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that *the Judicial Magistrate may order the father of a female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such female child, if married, is not possessed of sufficient means:*

Provided further that *the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:*

Provided also that *an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.*

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

5. Learned counsel for the revisionist submits that the family court has not correctly assessed the income of the revisionist, who is a retired **Air Force personnel**. He further submits that there is no reliable evidence to show that he is earning such an amount and the maintenance of Rs.30,000/- per month is excessive and shall be reduced.

6. Learned counsel for the opposite party submits that the wife has no source of income and is living separately due to the misconduct of the husband and despite receiving notice, the husband has not appeared before the court and due to his deliberate non-appearance, the order dated 20.08.2025 has been passed *ex-parte* directing to the revisionist-husband to pay Rs. 30,000/- per month to the wife-opposite party. He further submits that against an ex-parte order passed under Section 144 B.N.S.S., the remedy lies under Section 145(2) B.N.S.S. (corresponding Section 126(2) Cr.P.C.).

7. This Court has perused the record annexed with the paper-book and finds that the revisionist cannot challenge the *ex-parte* order before this Court as the same has been passed by the family court in accordance with law after due service of notice and the revisionist has an efficacious and alternative remedy to move an appropriate application under Section 145(2) of the B.N.S.S. before the trial court for setting aside the *ex-parte* proceedings and for seeking an opportunity to contest the case on merits. Thus, without availing such statutory remedy, the present revision is not maintainable and is liable to be dismissed on the ground of maintainability. The provision of Section 145 B.N.S.S. (corresponding Section 126 Cr.P.C.) is delineated below:

"145. Procedure.-

(1) Proceedings under section 144 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; or

(d) where his father or mother resides.

(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 advocate, 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 144 shall have power to make such order as to costs as may be just."

8. This Court is of the opinion that against the *ex-parte* order passed under Section 144 B.N.S.S. (corresponding Section 125 Cr.P.C.), the jurisdiction is vested in the Judicial Magistrate or the Family Court to recall the order under Section 145(2) B.N.S.S. (corresponding Section 126(2) Cr.P.C.), therefore, the power should be exercised by the Judicial Magistrate or the Family Court rather than by filing a revision before this Court and if any order is passed by the Judicial Magistrate or the concerned Judge, Family Court, under Section 145(2) B.N.S.S., thereafter the revision should be preferred before this Court under Section 19(4) of the Family Courts Act, 1984. The provisions of Section 19 of the Family Courts Act are delineated below:

"19. Appeal.- (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

***Provided that** nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).*

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the

Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

9. Considering the facts and circumstances of the case and submissions made by learned counsel for the parties, this Court finds that the order dated 20.08.2025 passed by the Principal Judge, Family Court, Jhansi, is an *ex-parte* order granting Rs. 30,000/- per month maintenance to the wife, which has been passed after due service of notice upon the revisionist.

10. This Court further finds that a specific statutory remedy is available under Section 145(2) of the B.N.S.S. for setting aside such *ex-parte* order before the trial court itself by showing sufficient cause and seeking an opportunity to contest the case on merits. However, in the present case, instead of availing the aforesaid statutory remedy, the revisionist has directly approached this Court by way of the present revision, which, in the considered opinion of this Court, is not in consonance with the provisions of Section 145(2) of the B.N.S.S. Therefore, the revisionist is directed to approach the concerned family court and move an application under Section 145(2) B.N.S.S. for recalling the order dated 20.08.2025.

11. In case there is any delay in approaching the trial court, it shall be open to the revisionist to move an appropriate application for condonation of delay along with affidavit, if so permissible under law, and the same shall be considered by the concerned court in accordance with law.

12. In view of the availability of such efficacious alternative remedy, this Court is of the considered opinion that the present revision is not maintainable and is liable to be dismissed at this stage.

13. With the aforesaid directions, this revision is **dismissed** on the ground of availability of alternative remedy.

14. It is open to the revisionist to approach the concerned family court in accordance with law, if so advised, to avail the aforesaid remedy.

(Praveen Kumar Giri,J.)

March 30, 2026

K.Tiwari