2026:AHC:232101

AFR

Reserved on : 05.08.2026

Delivered on : 06.11.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37393 of 2025

Rajendra Singh

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Along with :

1. **Criminal Revision No. 4610 of 2025:**
   Rajendra Singh
   Versus
   State of U.P. and 2 others

Counsel for Applicant(s) : Manvendra Narain Pathak, Rajeev Kumar Tiwari, Sanjay Tiwari

Counsel for Opposite Party(s) : G.A., Kuldeep Singh Chahar

Court No. - 93

HON'BLE HARVIR SINGH, J.

1. Heard learned counsel for the applicant, learned counsel for opposite party no. 2 and perused the record.

2. The instant application under Section 528 BNSS has been filed against the order dated 27.6.2025 as well as the recovery warrant dated 23.7.2025 issued by the Additional Principal Judge, Family Court No. 2, Agra in Execution Case No. 327 of 2024 (Smt. Safedi Vs. Rajendra Singh), under Section 128 Cr.P.C.

3. Learned counsel for the applicant, in the instant application moved under Section 528 BNSS, has specifically averred in paragraph 3 of the

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application, which reads as under:

> "That no earlier application/criminal revision/writ petition has been filed in Allahabad High Court or Lucknow Bench against the impugned order on the same or related cause of action or seeking the same or related relief and no such criminal revision, bail application or transfer application for the same relief was pending in the lower Court."

4. Learned counsel for the applicant further submitted that the learned Family Court, Agra, allowed the application of opposite party no. 2 filed under Section 125 Cr.P.C. However, learned counsel for the applicant submitted, that the knowledge of the said ex- parte order dated 20.11.2003 came of late and the applicant thereby moved an application under Section 145(2) BNSS/126(2) Cr.P.C. for setting aside the order dated 20.11.2003 with an application for seeking condonation of delay in moving the said application before the Family Court, Agra. However, the application for condonation of delay, seeking condonation of delay of about 21 years was rejected by the learned Family Court by order dated 8.4.2025. He further submitted, that the said order dated 8.4.2025 is not under challenge in this application before this Court. He further submitted that, after the dismissal of the application for condonation of delay, moved along with the application for setting aside the *ex-parte* order dated 20.11.2003, under Section 145(2) BNSS/126(2) Cr.P.C., the opposite party no. 2 filed Execution Case No. 327 of 2024 under Section 128 Cr.P.C./147 BNSS and the learned Family Court, after hearing the said application, passed an order dated 27.6.2025, thereby rejecting the application of the applicant herein, by the said order dated 27.6.2025 and thereafter issued warrant dated 23.7.2025. Therefore, the two orders dated 27.6.2025, by which the application of the applicant in Application No. 328 of 2024 was dismissed and the order of recovery warrant dated 23.7.2025 are under challenge in this application.

5. Learned counsel for the applicant further submitted, that the order dated 20.11.2003 and the order dated 8.4.2025 are not under challenge in this application, before this Court. However, the order dated 20.11.2003 has been challenged in Revision No. 4610 of 2025. He further submitted that the order dated 20.11.2003 passed in Maintenance Case No. 209 of 2003 has been challenged in separate appropriate proceedings, i.e., Revision No. 4610 of 2025 before this Court, but the said order has no bearings upon the present application of the applicant, inasmuch as the

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order dated 20.11.2003 is not the foundation for issuing recovery warrants against the applicant. He further submitted that the order dated 27.6.2025 passed in Execution proceedings No. 327 of 2024 and the recovery order dated 23.7.2025, both are illegal and arbitrary and the same are liable to be quashed and set aside.

6. Learned counsel for the applicant has submitted that the applicant (herein) was not afforded an opportunity, when the order dated 20.11.2003 was passed by the learned Family Court, Agra. He further submitted, that the applicant herein and opposite party No. 2 in Maintenance Case No. 209 of 2003 before the learned Family Court, was not properly served with any notice issued by the learned Family Court, Agra and, therefore, applicant was not at all aware of the fact of any such order dated 20.11.2003 passed in Maintenance Case No. 209 of 2003. Learned counsel for the applicant further submitted that opposite party no. 2 herein, while moving the application under Section 125 Cr.P.C. before the learned Family Court has stated in the application (under Section 125 Cr.P.C.) that applicant herein, is irresponsible person and is not taking care of the opposite party no.2. The opposite party no.2 has no means to maintain herself or her daughter. She is dependent on her parents. The applicant is posted as Constable in Railway Protection Force and he was earning Rs.8,000/- per month, apart from it, he owned agricultural land from which, he used to earn Rs.50,000/- per year. The applicant has refused to keep opposite party No. 2 and her daughter and neglected to maintain them. Opposite party No. 2 claimed Rs.5000/- per month as maintenance, for herself and for her daughter also.

7. On the other hand, learned counsel appearing on behalf of opposite party no. 2 has submitted, that the applicant herein has moved this application seeking a similar relief, which was being sought in Revision No. 4610 of 2025 and, hence, the foundation of the present application moved under Section 528 BNSS is the main substantive order of maintenance dated 20.11.2003 passed in Maintenance Case No. 209 of 2003. He further submitted that the relief sought in an application under Section 528 BNSS/482 Cr.P.C., against an order passed as per Section 125 Cr.P.C./145 BNSS is not maintainable.

8. Learned counsel for opposite party No. 2 argued that Sections 125, 126,

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127 and 128 of the Cr.P.C. has been replaced by Sections 144, 145, 146 and 147 BNSS, 2023 and the later is still in-vogue. However, pursuant to the passage of Family Court Act, the adjudication of cases under Chapter IX of the CrPC has been barred, as such, neither Section 125 of the CrPC has been superseded nor has it been declared non-est in the eyes of law. It is also a matter of fact and record, that the procedural and substantive provisions of Sections 125, 126, 127 and 128 CrPC/ 144, 145, 146 and 147 BNSS remains the same, as they were prior to the enactment of the Family Courts Act, 1984. He further submitted that, as far as practical difficulties and procedural aspects are concerned, no useful purpose would be served by debarring adjudication by a competent Magistrate, exercising jurisdiction and power under the Cr.P.C. now BNSS, for the reasons, that even for seeking relief of maintenance under Section 125 of the CrPC/Section 144 of the BNSS, an application has is being moved before the learned Family Court, i.e. adjudication is to be conducted by the judicial officer of the higher judicial services, i.e. Principal Judge / Additional Principal Judge, Family Court, whereas a competent Magistrate of the First Class is fully qualified to adjudicate upon the matters relating to matrimonial disputes and therefore, such jurisdiction ought to have been exercised by a learned Magistrate. Moreover, the adjudication of cases under Chapter IX Cr.P.C. by Family Courts has opened a flood of litigation before the High Court, and the floodgates of litigation have been opened, as number of cases relating to matrimonial disputes are concerned, they are on the rise everyday. Besides, if matrimonial disputes were decided by a competent Magistrate, the aggrieved party would have an opportunity of seeking the revisional remedy before the Family Court, being headed by the members of higher judicial services in the rank of District Judge/Additional District Judge and therefore, debarring such adjudication by a Magistrate, the aggrieved parties have lost a remedy and valuable opportunity, which was available to them, prior to the framing of scheme of Family Courts Act, 1984 and therefore, the exercise of power by Family Courts has become redundant in the present scenario. The prevailing circumstances and the nature of the litigation has also rendered the Family Court scheme redundant, as far as Chapter IX Cr.P.C. is concerned.

9. Learned counsel for opposite party no.2 has raised a legal issue, that as far as

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exercising jurisdiction u/s 482 Cr.P.C/528 BNSS. is concerned, the same, is barred for challenging the order passed Under Sections 125, 126, 127 and 128 Cr.P.C., as an alternative efficacious remedy of revisional jurisdiction is available to the applicant herein under law.

10. Learned counsel for opposite party no. 2 first of all referred and relied upon Chapter IX Cr.P.C., which reads as under:-

> **Statutory Scheme Governing Maintenance -The relevant extract of Section 125 of the Code of Criminal Procedure, 1973, relating to maintenance of wives, children and parents, is reproduced hereinbelow:**
>
> ***Section 125 - 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 minor 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 Magistrate may order the father of a minor 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 minor 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.

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Explanation.-For the purposes of this Chapter.-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(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 port of each month's 4[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.

Explanation.-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding , as the case may be 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.

Section 126 Cr.P.C. Procedure.

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

(a)where he is, or

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(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.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

Section 127 Cr.P.C. Alteration in allowance.

(1) On proof of a change in the circumstances of any person, receiving under section 125 a monthly allowance, for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that -

(a) the woman has, after the date of such divorce, re-married, cancel such order as from the date of her re-marriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order -

(i)in the case where such sum was paid before such order, from the date on which such order was made;

(ii)in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to [maintenance or interim maintenance as the case may be, after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] [Substituted by Act 50 of 2001, Section 3 (w.e.f. 24-9-2001).] to be paid under Section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.

10. The relevant provisions of Section 397 of the Code of Criminal Procedure, 1973, relating to the revisional jurisdiction of the High

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Court and the Sessions Court, are reproduced hereinbelow:

397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation. -All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under— this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

11. The relevant provisions of Section 19 of the Family Courts Act, 1984, relating to appellate and revisional remedies, are reproduced herein below:

Section 19 of the Family Courts Act ,1984, which is as follows:-

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the code 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 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

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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.

11. Learned counsel for opposite party No. 2 referred to the doctrine of harmonious construction, wherein the Hon'ble Supreme Court has held that, it is not always necessary for a particular statute or law to be declared null and void or non-est, but with the passage of time, such law may become redundant and may have lost its utility. The Hon'ble Supreme Court in the case of **State of Bombay vs. F.N. Balsara AIR 1951 SC 318** has emphasized the importance of interpreting statutes in a manner that avoids absurd or unjust results and promotes the object and purpose of the legislation.

Principles that Govern the Doctrine of Harmonious Construction

In the landmark case of ***Commissioner of Income Tax v. M/S Hindustan Bulk Carriers*** **(2003) 3 SCC 57**, the Supreme Court established five fundamental principles governing the rule of harmonious construction:

1. Avoidance of Conflicts: Courts should exert every effort to prevent conflicts between provisions and endeavor to interpret them in a manner that harmonizes their meaning. This principle emphasizes the importance of coherence and consistency in statutory interpretation, promoting a holistic understanding of legislative intent.

2. Presumption against Nullification: A provision in one section of the law should not be used to nullify or render ineffective a provision found in another section unless reconciliation is genuinely impossible despite diligent effort. This principle underscores the presumption of validity and effectiveness accorded to legislative provisions, urging courts to prioritize reconciliation over nullification.

3. Maximization of Effectiveness: In instances where complete reconciliation of inconsistencies between provisions is unattainable, courts must strive to interpret them in a manner that gives effect to both provisions to the greatest extent possible. This principle reflects the overarching goal of statutory interpretation to give effect to legislative intent while minimizing conflicts and redundancies.

4. Avoidance of Redundancy: Courts must be vigilant to avoid interpretations that render any provision redundant or meaningless. This principle highlights the imperative to preserve the substantive content of statutory provisions and to avoid interpretations that diminish their efficacy or significance.

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> 5. Preservation of Statutory Integrity: Harmonizing contradictory provisions entails preserving and not destroying any statutory provision or rendering it ineffective. This principle underscores the importance of maintaining the integrity and coherence of the statutory framework, ensuring that each provision retains its intended significance and purpose.

12. In the case of ***A.G. Varadarajulu v. State of Tamil Nadu***, **AIR 1998 SC 1388** has held as under:-

> "When one section of a law contradicts another, a non-obstante clause may be necessary to resolve the conflict. Without such a clause, a direct clash can occur, which the court should seek to avoid. Instead, the court should interpret conflicting provisions in a way that aligns them. The court should also consider the legislature's intent in determining whether one provision should take precedence over another."

13. Similar situation exists in the case of adjudication of maintenance cases under Sections 125, 126, 127 and 128 Cr.P.C/ 144, 145, 146 and 147 BNSS, wherein the exclusion of the jurisdiction of a Magistrate of the First Class has rendered the scheme, an attempt in futility. Learned counsel further submitted that, it is not the case that, if a Magistrate was given the jurisdiction and empowered in the same manner, as matrimonial disputes were decided prior to the formulation of the scheme under the Family Courts Act, then nothing could change, if the litigation and adjudication remains in operation and shall be continued in the same manner, as if the procedures, methods, devices and the system, those were applicable prior to the exclusion of jurisdiction of the Family Courts Act, 1984 were still applicable under BNSS, 2023 to be adjudicated upon by a Magistrate.

14. Learned counsel for opposite party No. 2 reiterated that, if the sub-clause (a) of Section 2 and Section 8 of Family Court Act excluding the jurisdiction of a First Class Magistrate in the adjudication of matrimonial disputes, were restored, no further law, statute or any amendment would be required to streamline the process of disposal and adjudication of matrimonial disputes, meaning thereby, if the exclusion of jurisdiction is restored and resumed upon Magistrates and adjudication is taken away from the Family Courts applicable to Chapter-IX Cr.P.C., then the system and procedure for adjudication of matrimonial disputes would continue to operate and the disputes would be continued to be decided by the Magistrates. Thereafter, if any order is passed by the learned Magistrate,

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the aggrieved party would have an opportunity to seek the remedy of revision before the learned Family Courts, as provided under the Code of Criminal Procedure.

15. Learned counsel for opposite party No. 2 also referred to the Gram Nyayalayas Act, 2008, and the Protection of Women from Domestic Violence Act, 2005, wherein a First Class Magistrate has been empowered to adjudicate the matters relating to matrimonial disputes under Sections 125, 126, 127 and 128 Cr.P.C./ 144, 145, 146 and 147 BNSS. He further submitted that, insofar as the Gram Nyayalayas Act is concerned, the same has been given power and authority to adjudicate upon the matrimonial disputes in the same manner, as are being decided and adjudicated upon by the Family Courts headed by the judicial officers of higher judicial services and therefore, there is not only a dichotomy, but also an overlapping of the powers and jurisdiction exercised by a First Class Magistrate and those exercised by a member of the higher judicial services, i.e., a District Judge/Additional District Judge. If a Magistrate of the First Class can exercise the jurisdiction and power in the same manner, as is being exercised by a judicial officer of the cadre of District Judge/Additional District Judge, then the said power be relegated to be exercised by a Magistrate of the First Class, if the said Magistrate is posted within the scheme of the Family Courts Act, 1984. It is only a matter of posting and attaching a Magistrate of the First Class within the scheme of the Family Court, and such a Magistrate would be fully competent to decide and adjudicate the matters falling within the purview of Chapter IX of the CrPC and Chapter X of the BNSS. Hence, the anomaly and dichotomy have to be removed in the present scenario, as two officers belonging to different cadres and status should invariably be permitted/not permitted to exercise such powers, as conferred under Chapter IX CrPC/Chapter X BNSS, therefore, the exercise of power by learned Family Courts presided over by officers of the rank of District Judge/Additional District Judge should be segregated and restored to the cadre of Judicial Magistrates within the hierarchy of judicial officers of the district Courts.

16. So far as the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as D.V. Act) is concerned, a Judicial Magistrate of

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the First Class has not only been conferred the power to award compensation to an aggrieved woman, who has been subjected to domestic violence at the hands of her in-laws, but the Magistrate is also competent to pass an order granting monthly amount of maintenance to the woman and her children, if they have been subjected to domestic violence at the hands of her in-laws. Moreover, the learned Magistrate is also competent to pass an order directing the in-laws to provide the accommodation for the wife, wherein the in-laws have indulged into domestic violence or prevented her from residing in the matrimonial home. Therefore, the powers being conferred and exercised by a learned Magistrate under the Domestic Violence Act are much wider than exercised by a member of HJS cadre, adjudicating upon the matrimonial disputes under Chapter IX of the CrPC. Hence, there is also a dichotomy and overlapping, if the same subject matter is being adjudicated upon by a Magistrate of the First Class and a member of the higher judicial services, i.e., District Judge/Additional District Judge. Therefore, the anomaly must be removed in letter and spirit and also to provide justice to the needy and weaker sections of the society, particularly women and children facing matrimonial disputes.

17. Learned counsel for opposite party No. 2 further submitted that, if an order has been passed by a learned Magistrate, under the Domestic Violence Act, the same is liable to be recalled by the Magistrate himself, and an appeal may be filed against such an order before the learned District Judge. However, in the case of an order passed by a learned Family Court, the same has to be challenged before the Hon'ble High Court under its revisional jurisdiction, therefore, the anomaly requires to be removed by restoring the power of a Magistrate to exercise jurisdiction and adjudication in respect of Chapter IX of the CrPC, now Chapter X of the BNSS and thereafter a revision can be filed before the Family Court, challenging the order of the Magistrate. He further submitted that the Hon'ble Supreme Court, in the case of ***Rajnesh vs. Neha and another*****, AIR 2021 SC 569** has held, that the scheme of Family Court not only includes the matrimonial cases of different nature to be adjudicated and decided by the Family Court itself, but also the proceedings under Chapter IX of the CrPC/ under Chapter X BNSS, the Domestic Violence Act, and other matters governed by the Hindu Marriage Act and the

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Guardians and Wards Act have been put together in the scheme of Family Courts, as the same relates to the disputes between husband and wife or the maintenance awarded to parents, but the adjudication, limited to the grant of maintenance under Chapter IX Cr.P.C. has become redundant.

18. Learned counsel submitted that, there is a need to empower Magistrates to exercise jurisdiction not only under Sections 125, 126, 127 and 128 of the CrPC / 144, 145, 146 and 147 BNSS but also, the same has become an obstacle in harmonizing and giving uniformity in disposal of matrimonial and maintenance cases by an officer of the rank of First Class Magistrate and District Judge / Family Court and once the matter is decided by the Magistrate, the same can be challenged before an officer of the higher judicial services, i.e., a District Judge/Additional District Judge, whether presiding over a Family Court or otherwise, in accordance with the applicable law.

19. Under the circumstances, learned counsel for opposite party No. 2 submitted that appropriate remedy for seeking challenge to any order passed under Sections 125, 126, 127 and 128 Cr.P.C./ Sections 144, 145, 146 and 147 BNSS is the revisional jurisdiction before Sessions Court/Family Court, if an order has been passed by a Magistrate.

20. Learned counsel appearing on behalf of opposite party no. 2 submitted that this Court, in the case of ***Kapil Sirohi Vs. State of U.P. and 2 Others*** passed in an application under Section 482 Cr.P.C. No. 17877 of 2024, held as under:-

> "**Under the circumstances, as held by the Hon'ble Supreme Court and various High Courts, the appropriate remedy is available to the litigants challenging the order passed under Sections 125, 126, 127 & 128 Cr.P.C./ 144, 145, 146 &147 BNSS, by way of a revisional jurisdiction before this Court in the first instance and not under Section 482 Cr.P.C./528 BNSS, as the law relied upon by the learned counsel for the applicant, and to say that as far as the case of Prabhu Chawla vs State Of Rajasthan & Anr. on 5 September, 2016 :2016 (16) SCC 30, is concerned, the Hon'ble Supreme Court has already held that, there is no bar of invoking jurisdiction under Section 482 Cr.P.C./ 528 BNSS, but the issue of entire proceedings viz-viz upholding or setting aside single order in revisional jurisdiction being exercised under Sections 125, 126, 127, 128 Cr.P.C./ 144, 145, 146 &147 BNSS was not taken into consideration and the case of Prabhu Chawla (*Supra*) was confined to the offences made under Indian Penal Code only.**

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Hence by having a Conjoint reading of Section 19 of Family Court Act and Section 397 Cr.P.C., a clear cut distinction can be made with respect to maintenance cases filed under Chapter IX Cr.P.C./BNSS and the offences covered under IPC. Therefore, cases falling under Chapter IX of Cr.P.C./ X of BNSS and the order passed thereunder, can be challenged in revisional jurisdiction and not by invoking the power enshrined under Section 482 Cr.P.C./528 BNSS.

Hence, it is directed that, as far as, Chapter IX of Cr.P.C./ X of BNSS is concerned, the appropriate legal remedy lies, by invoking the revisional jurisdiction and not permissible under Section 482 Cr.P.C./ 528 BNSS."

21. Further, learned counsel for opposite party no. 2 submitted that the present adjudication has an overriding effect upon the law, existing prior to the scheme of Family Court and submitted that filing of a revision against an order passed by the learned Family Court, i.e., a court presided over by an officer of the rank of Additional District Judge/District Judge of the HJS cadre, has become redundant and impracticable, inasmuch as a floodgate of litigation has opened before the High Court, whereas such cases ought to have been decided at the level of the Family Court itself. He next submitted that after the passage of the Family Courts Act, 1984, the powers of the Magistrate hitherto being exercised by a Judicial Magistrate First Class have been vested in the Family Court and submitted that a question of law is involved in the present case, as to whether the scheme promulgated by the Government for deciding cases of maintenance under Sections 144, 145, 146 and 147 BNSS, 2023 is being exercised by an officer of the HJS cadre, or whether the same could be exercised by a Judicial Magistrate First Class, as was initially provided under Sections 125, 126, 127 and 128 Cr.P.C. He further submitted that, by applying the Doctrine Harmonious construction, the power, so exercised by learned District Judge and Additional District Judge and officers of the rank of HJS has become redundant and referred to **Section 12 of The Protection Of Women From Domestic Violence Act, 2005**, which is relevant and hereinafter is quoted below :-

"12. Application to Magistrate.--- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report

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received by him from the Protection Officer or the services provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit fo compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the orde made by the Magistrate under this Act shall be set off against the amount payable under such decree am the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), any other law for the time being in force, be executable for the balance amount, if any, left after such s off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as m be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) wit a period of sixty days from the date of its first hearing."

22. Learned counsel for the opposite party no. 2 also referred to relevant sections of Gram Nyayalaya Act, 2008 and submitted that besides deciding the case on merit, the petitioner has raised a legal issue that, even if the jurisdiction has also been conferred upon the Gram Nyayalaya, whereas the Gram Nyayalaya is headed by an officer of the cadre of Civil Judge (Junior Division)/First Class Magistrate and referred to the scheme of Family Courts Act 1984, wherein the Family Courts still continued to exercise the jurisdiction over Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023). Learned counsel submitted, that both the Family Court, as well as Gram Nyayalaya, as of now, exercises concurrent jurisdiction over Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023).

23. Learned counsel for the opposite party No. 2 further submits that, as per the hierarchy of the Courts within the districts, the normal nomenclature is as under:-

Highest Judicial Officer being in district, District and Sessions Judge/ Principal Judge, Family Court; Additional District and

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Sessions Judge/ Additional Principal Judge, Family Court; Chief Judicial Magistrate, Civil Judge (Senior Division)/ Additional Civil Judge (Senior Division); Additional Chief Judicial Magistrate; Civil Judge (Junior Division)/ Additional Civil Judge (Junior Division); Judicial Magistrate,Gram Nyayalaya Adhikari.

24. Learned counsel for the opposite party No. 2 further submits that the Judicial Officers of the Districts, discharge their duties as per the jurisdiction assigned to them, either under common law, such as Indian Penal Code, Civil Procedure Code or any other law, for the time being in force and the Gram Nyayalaya headed by an officer of the rank of Civil Judge (Junior Division) exercises jurisdiction under Gram Nyayalaya Act, 2008, on the subjects and other Acts, conferred upon, by the jurisdiction in this behalf.

25. Learned counsel for the opposite party No. 2 further submits that the Family Courts Act, 1984, as constituted by the Uttar Pradesh State Government, vide Notification No.79/11/86-Jus., dated September 4, 1986, has conferred the jurisdiction upon Family Courts, initially exercised by a Ist- Class Magistrate and the Gram Nyayalaya Act, 2008 has conferred the jurisdiction upon the Gram Nyayalaya/Judicial Magistrate Ist class as per part II of first Schedule, thereby empowered the Gram Nyayalaya / Magistrate to exercise jurisdiction on the subjects and Sections under Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023). Learned counsel for the petitioner further submits that, as far the jurisdiction assigned to Family Courts, as per Family Court Act, 1984 is concerned, the Family Courts have been given jurisdiction to entertain and adjudicate upon the matters, with respect to Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) and further submits that, there is an overlapping, as far as jurisdiction under Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) as conferred upon Family Courts, as well as the Gram Nyayalaya Act, 2008 or in other words, both the Family Courts and Gram Nyayalaya have concurrent jurisdiction over Chapter IX Cr.P.C./Chapter X BNSS.

26. Learned counsel for the opposite party No. 2 further submitted that, the legislature by conferring the concurrent jurisdiction i.e. one under Family Court Act, 1984 and another under Gram Nyayalaya Act, 2008, the former being exercised by the officers of the Higher Judicial

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Service cadre and the later being exercised by the officers of the Civil Judge (Junior Division) cadre, has led to disparity, and anomaly, within the cadre of the District Courts. Hence, the arrangement has not only created a fuss, but has also led to disparity, judicial impropriety and overlapping in exercising jurisdiction, over one and the single subject i.e. Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) by two different judicial officers in two different ranks, one being Magistrate and another being District Judge, in the hierarchy and therefore, the subject matter of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) ought not to have been included in Part II of the first Schedule of Gram Nyayalaya Act, 2008, as the same was fully operating under the scheme of Family Courts Act, 1984, prior to the passage of Gram Nyayalaya Act, 2008 and the system is still operating within the Family Courts Scheme, concurrently.

27. Learned counsel for the opposite party No. 2 submitted that, at the time of framing of the Gram Nyayalaya Act, 2008, either the matter of adjudication by Family Courts in respect of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) could not be brought to the notice of the concerned Committee, which formulated Gram Nyayalaya Act, 2008 or it skipped the attention of the lawmakers, that two different Courts of judicial officers from two different cadres, within the District have been assigned jurisdiction to adjudicate upon the same subject matter i.e. Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023). Consequently, within the local jurisdiction of District Courts, the Judicial Magistrate, Ist Class and Sessions Judge/ Addl. Sessions Judge/ Principal Judge, Family Court/ Addl. Principal Judge, Family Court are exercising powers on one and the same Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023).

28. Learned counsel for the opposite party No. 2 further submits that, Section 7(2)(a) and 8(b) of Family Courts Act, 1984 reads as follows:-

7. Jurisdiction.—

(2) Subject to the other provisions of this Act, a Family Court shall also

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have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

8. Exclusion of jurisdiction and pending proceedings.—*Where a Family Court has been established for any area,—*

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

Therefore, on the one hand, the Family Courts excluded the jurisdiction to be exercised by a first class Magistrate, as far as Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is concerned and prohibited the first class Magistrate to exercise jurisdiction over subject matter of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) and on the other hand, part II of the first Schedule conferred jurisdiction upon a first class Magistrate to adjudicate upon subject matter of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023), under the **Gram Nyayalaya Act, 2008**. Therefore, there is a disparity, dissimilarity and overlapping and anomaly in two jurisdictions, on the same subject of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) and therefore, any matter being decided or adjudicated by the Presiding Officer Gram Nyayalaya shall be in contravention of Section 8(b) of Family Courts Act, 1984.

29. Learned counsel for the opposite party No. 2 further referred to the relevant Sections of the Gram Nyayalaya Act, 2008 and the Family Courts Act, 1984, a further analysis is required with respect to the

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anomaly and overlapping of the jurisdiction between the two Acts i.e. Gram Nyayalaya Act, 2008 and the Family Courts Act, 1984.

Gram Nyayalaya Act, 2008	**Family Courts Act, 1984**
11. Jurisdiction of Gram Nyayalaya.— *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, the Gram Nyayalaya shall exercise both civil and criminal jurisdiction in the manner and to the extent provided under this Act.*	***7. Jurisdiction.—*** *(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—* *(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and* *(b) such other jurisdiction as may be conferred on it by any other enactment.*
12. Criminal jurisdiction.— *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, the Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report a*8.4.2025*nd shall---* *(a) try all offences specified in Part I of the First Schedule; and* *(b) try all offences and grant relief, if any, specified under the enactments included in Part II of that Schedule.* *(2) Without prejudice to the provisions of sub-Section (1), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts which may be notified by the State*	***8. Exclusion of jurisdiction and pending proceedings.—****Where a Family Court has been established for any area,—* *(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);*

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Government under sub-Section (3) of Section 14.	
14. Power to amend Schedules.— *(1) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, add to or omit any item in Part I or Part II of the First Schedule or Part II of the Second Schedule, as the case may be, and it shall be deemed to have been amended accordingly.* *(2) …..* ***(3) If the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.***	***20. Act to have overriding effect.—*** *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

Hence, the disparity, which has been created by creation of Gram Nyayalayas under the Gram Nyayalaya Act, 2008, still continues and therefore, Section 18 of Gram Nyayalaya Act, 2008, is explicitly clear that, if the jurisdiction conferred upon Gram Nyayalaya with respect to Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is inconsistent with the proviso of this Act, the same can be rectified. Hence, Section 18 of Gram Nyayalaya Act and Section 20 of Family Courts Act, 1984 are overlapping with each other, as far as jurisdiction of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is concerned, and the subject of maintenance of wives, children and parents is more akin and related to scheme of Family Courts and should continue to remain within the framework of the Family Courts.

30. Learned counsel for the opposite party No. 2 referred to the Domestic Violence Act, 2005, comparing the provision of both the Acts, in grant of

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maintenance to the wives and children, mother father, unable to maintain themselves.

Domestic Violence Act, 2005	**Family Courts Act, 1984**
12. Application to Magistrate *(I) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.* *(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.* *(3) Every application under sub-section (1) shall be in such form and contain such*	***7. Jurisdiction.—*** *(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—* *(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and* *(b) such other jurisdiction as may be conferred on it by any other enactment.* ***8. Exclusion of jurisdiction and pending proceedings.—*** *Where a Family Court has been established for any area,—* *(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);* ***20. Act to have overriding***

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particulars as may be prescribed or as nearly as possible thereto. *(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the —date of receipt of the application by the Court.* *(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.*	***effect.*** *--- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

31. The Hon'ble Supreme Court in the case of ***Rajnesh vs. Neha and another*****, AIR 2021 SC 569** has held that proceedings under Chapter IX, under Sections 125, 126, 127 and 128 of the CrPC/ Sections 144, 145, 146 and 147 BNSS are summary proceedings and therefore, such proceedings can very well be conducted and adjudicated upon by a Magistrate of the First Class and not required to be adjudicated upon by an officer, belonging to the cadre of the higher judicial services. Moreover, in the said judgement of ***Rajnesh vs. Neha*** (supra), the Hon'ble Supreme Court has not only elaborated upon the nature of matrimonial disputes, but has also devised a formula and procedure for assessing the income of the parties for the purpose of determining compensation/maintenance to the aggrieved party by formulating the procedure in the form of affidavits to be filed from both the sides and therefore, the entire procedure has not only been simplified, but also stands streamlined for deciding matrimonial disputes and hence, when the power and authority in adjudicating the matrimonial disputes under Chapter IX of Sections 125, 126, 127 and 128 Cr.P.C./Sections 144, 145, 146 and 147 BNSS may be restored to Magistrates of the First Class in the prevailing circumstances and the scenario, which has opened the floodgates for the cases arising out of matrimonial disputes before the High Courts.

32. The Hon'ble Supreme Court in the case of ***Rajnesh vs. Neha and another*****, AIR 2021 SC 569** has further held that;

> "it is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek

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maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.

In the backdrop of the facts of this case, we considered it fit to frame guidelines on certain aspects pertaining to the payment of maintenance in matrimonial matters. There are different statutes providing for making an application for grant of maintenance / interim maintenance, if any person having sufficient means neglects, or refuses to maintain his wife, children, parents. The different enactments provide an independent and distinct remedy framed with a specific object and purpose. Inspite of time frames being prescribed by various statutes for disposal of interim applications, we have noticed, in practice that in a vast majority of cases, the applications are not disposed of within the time frame prescribed. To address various issues which arise for consideration in applications for grant of maintenance / interim maintenance, it is necessary to frame guidelines to ensure that there is uniformity and consistency in deciding the same.

Guidelines / Directions on Maintenance

3. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

4. Article 15(3) of the Constitution of India provides that :

> "*Nothing in this article shall prevent the State from making any special provision for women and children.*"

5. Article 15 (3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

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6. Justice Krishna Iyer in his judgment in Captain **Ramesh Chander Kaushal v Mrs. Veena Kaushal & Ors**. held that the object of maintenance laws is :

"*9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15 (3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts."*

7. The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 ("SMA"), Section 125 of the Cr.P.C. 1973; and the Protection of Women from Domestic Violence Act, 205 ("D.V. Act") which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.

(d) Section 125 of the Cr.P.C.

Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions : (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court / family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

The amended Section 125 reads as under :

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

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

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

(b) his legitimate or illegitimate minor 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 Magistrate may order the father of a minor 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 minor 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 allow 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 :

Directions on overlapping jurisdictions

> It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent.
>
> (iv) Section 20(2) of the D.V. Act provides that the monetary relief granted to the aggrieved woman and / or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.
>
> Section 19 (I) (f) of the D.V. Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the Civil Appeal No. 2483 / 2020 decided vide Judgment dated 15.10.2020. respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.
>
> Section 125 (2) Cr.P.C. is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application. 46 In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are : first, from the date on which the application for

maintenance was filed; second, the date of the order granting maintenance; third, the date on which the summons was served upon the respondent.

Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in S. 125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

(a) Issue of overlapping jurisdiction

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set- off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

25. Amount of maintenance.-

(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in Sub-section (2) or Sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to--

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own 17-11-2020 (Page 11 of 48) www.manupatra.com Library Dwarkaearning or from any

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other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to -

(a) the net value of the estate of the deceased after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect, of the dependant;

(c) the degree of relationship between the two;

(d) the reasonable wants of the dependant;

(e) the past relations between the dependant and the deceased;

(f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;

(g) the number of dependants entitled to maintenance under this Act.

33. Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance Under Section 125 of the Code of Criminal Procedure may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Code of Criminal Procedure is to provide immediate relief to an applicant. An application Under Section 125 Code of Criminal Procedure is predicated on two conditions: (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the **Magistrate** to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

34. Having considered the rival contentions and after perusal of the material on record, it can be concluded that;

> "**The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956 as held by Hon'ble Supreme Court in Rajnes vs. Neha** (supra)**."**

35. In ***Bhagwan Dutt v. Kamla Devi*** **MANU/SC/0205/1974 : (1975) 2 SCC 386** the Supreme Court held that Under Section 125(1) Code of

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Criminal Procedure only a wife who is "unable to maintain herself" is entitled to seek maintenance. The Court held:

> "The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.
>
> Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs. 500 "in the whole". In view of the rising costs of living and inflation rates, the ceiling of Rs. 500 was done away by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the Respondent to make a monthly allowance towards interim maintenance during the pendency of the petition."

36. Proceedings Under Section 125 of the Code of Criminal Procedure are summaryin nature. In **Bhuwan Mohan Singh v. Meena and Ors. MANU/SC/0605/2014 : (2015) 6 SCC 353** this Court held that Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman, who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

37. Hence, without going into the merits of the case, the said application U/s 482 Cr.P.C. is liable to be dismissed as not maintainable, as held by this Court in the case of **Kapil Sirohi** (*supra*).

38. The present application preferred under Section 482 Cr.P.C. is ***dismissed*** being not maintainable, however, liberty is given to the applicant to seek appropriate legal remedy of revision, if so advised.

39 (i). To look into the applicability of BNSS., 2023, if any order is passed by the learned Magistrate, the aggrieved party would have an

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opportunity to seek the remedy of revision before the learned Sessions Courts, as provided under the Code of Criminal Procedure. Insofar as the Gram Nyayalayas Act is concerned, the same has been given power and authority to adjudicate upon the matrimonial disputes in the same manner, as are being decided and adjudicated upon by the Family Courts, headed by the judicial officers of higher judicial services and therefore, there is not only a dichotomy, but also an overlapping of the powers and jurisdiction exercised by a First Class Magistrate and those exercised by an officer of the higher judicial services, i.e., a District Judge/Additional District Judge. If a Magistrate of the First Class can exercise the jurisdiction and power in the same manner, as is being exercised by a judicial officer of the cadre of District Judge/Additional District Judge, then the said power be relegated to be exercised by a Magistrate of the First Class, if the said Magistrate is posted within the scheme of the Family Courts Act, 1984.

(ii). So far as the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as D.V. Act) is concerned, a Judicial Magistrate of the First Class has not only been conferred the power to award compensation to an aggrieved woman, who has been subjected to domestic violence at the hands of her in-laws, but also the Magistrate is competent to pass an order granting monthly amount of maintenance to the woman and her children, if they have been subjected to domestic violence at the hands of her in-laws. Moreover, the learned Magistrate is also competent to pass an order directing the in laws to provide the accommodation for the wife, wherein the in-laws have indulged into domestic violence or prevented her from residing in the matrimonial home. Therefore, the powers being exercised by a learned Magistrate under the Domestic Violence Act are much wider, as compared to be exercised by a member of HJS cadre, adjudicating upon the matrimonial disputes under Chapter IX of the CrPC. Hence, there is also a dichotomy and overlapping, if the same subject matter is being adjudicated upon by a Magistrate of the First Class and a member of the higher judicial services, i.e., District Judge/Additional District Judge.

(iii). If an order has been passed by a learned Magistrate under the Domestic Violence Act, the same is liable to be recalled by the Magistrate himself, and an appeal may be filed against such an order before the

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learned District Judge. However, in the case of an order passed by a learned Family Court, under Chapter X BNSS, 2023, the same has to be challenged before the Hon'ble High Court under its revisional jurisdiction, therefore, the anomaly requires to be removed by restoring the power of a Magistrate to exercise jurisdiction and adjudication in respect of Chapter IX of the CrPC, now Chapter X of the BNSS, 2023 and thereafter a revision can be filed before the Family Court, challenging the order of the Magistrate. The present adjudication has an overriding effect upon the law, existing prior to the scheme of Family Court and further submitted, that filing of a revision against an order passed by the learned Family Court, i.e., a court presided over by an officer of the rank of Additional District Judge/District Judge of the HJS cadre, has become redundant and impracticable.

(iv). By conferring jurisdiction upon the Family Courts, in respect of proceedings under Sections 144, 145, 146 and 147 of the BNSS, 2023, the same has taken away the valuable opportunity of being availed at the district level, since prior to the passage of Family Courts, the cases falling under Chapter IX of the CrPC were being adjudicated by a First Class Magistrate. Hence, any legislation, which takes away such a valuable right and opportunity of the litigant being heard at the district level, becomes redundant and impracticable, hence it is in the fitness of the things and in the interest of litigants that the adjudication be conducted by a First Class Magistrate in respect of Chapter X of BNSS, 2023.

(v). It is also a matter of fact, that the litigants in such proceedings are generally women, children and aged parents, who are often the aggrieved parties, those have been denied maintenance and therefore such litigants must, therefore, have an opportunity at the district level to challenge or otherwise agitate against any order passed by the Magistrate, before the Sessions Court / Family Courts and feel less burdened financially, being already facing financial crises because of denied of maintenance, at the hands of espying husbands and the young earning children, who have denied maintenance to the parents.

(vi.) For the reasons that seats of High Courts are situated at much distance from the districts. The State, being a welfare State, has to look into the aspects of providing all such necessities under the rules of law

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and therefore, women, children and old aged parents are the litigants where the needs, support in crises and seeking legal remedies and speedy justice is the sine qua non of a welfare State. It is only a matter of posting and attaching a Magistrate of the First Class within the scheme of the Family Court, and such a Magistrate would be fully competent to decide and adjudicate the matters falling within the purview of Chapter IX of the CrPC and **Chapter X of the BNSS, 2023**, which reads as under:-

> ***"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* ***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*

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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."

40. Resultantly, it is held that:

(i) The adjudication of proceedings under Sections 144, 145, 146 and 147 of the BNSS, 2023 falling under Chapter X is to be conducted and carried out by a First Class Magistrate, being the latest legislation on the subject.

(ii) Under the circumstances, the Registrar General of this Court is directed to place a copy of this judgment before Hon'ble the Chief Justice, with a REQUEST to consider posting or attachment of one or more Magistrates within the scheme of Family Courts, so that the dichotomy arising out of overlapping jurisdiction and inequitable exercise of power is not only removed, but the same is applied in consonance with the ideals and features of a welfare State. The aforesaid exercise shall be completed within a period of three months.

41. Registrar (Compliance) is directed to communicate the copy of this order to all District Judges/Principal Judges Family Courts and be also communicated to Central Law Commission, Delhi and the State Law Commission, U.P. respectively.

Order on Criminal Revision No. 4610 of 2025

1. Heard learned counsel for the revisionist, learned counsel for the opposite party no. 2 and perused the record.

2. The instant revision has been filed against the order dated 20.11.2003 passed by learned Additional Principal Judge, Family Court No. 2, Agra. By the said order dated 20.11.2003, a sum of Rs. 1000/- has been awarded as monthly maintenance to opposite party no. 2 and a sum of Rs. 1000/- to opposite party no. 3 respectively.

3. Learned counsel for the revisionist has submitted that, learned Family Court, Agra without considering the facts, allowed the application of opposite party no. 2, without giving an opportunity of hearing to the applicant and passed an ex-parte order on 20.11.2003 and has awarded a sum of Rs. 1000-/- as monthly maintenance to opposite party no. 2 and a sum of Rs. 1000/- to opposite party no. 3. He next submitted that, when it

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came into the knowledge of the revisionist, then the revisionist preferred an application dated 22.7.2024 under Section 145(2) BNSS/126 Cr.P.C. along with application seeking condonation of delay before Family Court, Agra, for recalling the order dated 20.11.2003 and on the application of the revisionist, the court has passed the order, fixing the date for objection and disposal. He further submitted that opposite party no. 2 filed an objection on 5.11.2024, alleging therein, that the revisionist has moved application for condonation of delay in filing the application under Section 126(2) Cr.P.C., therefore, the application under Section 126(2) Cr.P.C. is time barred and the ground shown in the application for condonation of delay is not sufficient. Thereafter application, under Section 5 of the Limitation Act in recalling application under Section 126(2) Cr.P.C. has been rejected vide order dated 8.4.2025 passed by learned Additional Principal Judge, Family Court No. 2, Agra by giving wrong finding, that the material on record shows, that the maintenance petition was filed way back in the year 2003 and after a lapse of twenty years, the matter is still pending due to mala fide intention and delaying tactics of revisionist, the revision has been filed with false and baseless allegations, in order to harm and harass the opposite party no. 2.

4. Learned counsel for the revisionist has submitted that the learned Family Court, without considering the facts and the evidence on record, rejected the delay condonation application along with the recall application moved by the revisionist, vide order dated 8.4.2025. He further submitted, that the learned Family Court, Agra has passed ex-parte order without affording opportunity of hearing to the revsionist, as well as the order of maintenance dated 20.11.2003 passed by learned Family Court, Agra both are illegal, arbitrary and liable to be quashed and set aside.

9. On the other hand, learned counsel appearing on behalf of opposite party No. 2 submits, that the order passed by learned Additional Principal Judge, Family Court, under Section 125 of the Code of Criminal Procedure, 1973 (corresponding Section 144 of Bhartiya Nagrik Suraksha Sanhita, 2023) awarding a sum of Rs. 1000/- per month to opposite party No. 2 and a sum of Rs. 1000/- to opposite party no. 3 is in accordance with law and calls for no interference by this Court and prayed that the

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present revision s liable to be dismissed.

10. Having considered the rival contention and after perusal of the material on record, it is found, that the order dated 08.04.2025 passed in Misc. Case No. 1798 of 2024, appears to be in accordance with law, as the same is based on specific findings given by learned Family Court, that the revisionist herein has preferred application, seeking the certified copies of the orders on dated 26.8.2008 and thereafter the notices issued by the learned Family Court were also received by the revisionist herein. It has also come on record, that the registered notices sent by the learned Family Court were duly received by the revisionist herein and the ground that the revisionist did not receive any notice of the Family Court or he was not having any knowledge of the pendency of case under Section 125 CrPC is totally false and the application for condonation of delay has rightly rejected by the learned Family Court, finding that the notices upon the revisionist were duly served and the pendency of case under Section 125 CrPC was within his knowledge. Hence, no interference is called for in order dated 8.4.2025. The same being in accordance with law. Consequently, the order dated 20.11.2003 also calls for no interference for the reason that, if the application for condonation of delay stands rejected, no further order is required to be passed on substantive revision.

11. Resultantly the present revision is devoid of merit and is liable to be dismissed. Hence dismissed.

(Harvir Singh,J.)

November 6, 2026
Faridul

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Digitally signed by :-
FAREEDUL HASAN
High Court of Judicature at Allahabad