



IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No.142 of 2026

Subhash Sao

....

Petitioner

Ms. Laxmi Sharma, Advocate

-versus-

**Nirupama Sahu &
another**

....

Opp. Parties

TRPCRL No.41 of 2026

Subhash Sao

....

Petitioner

Ms. Laxmi Sharma, Advocate

-versus-

Nirupama Sahu & another

Opp. Parties

CORAM:

JUSTICE MRUGANKA SEKHAR SAHOO

ORDER

06.05.2026

(Hybrid Mode)

Order No.

01.

1. TRP(C) No.142 of 2026 has been filed U/s.24 of CPC for transfer of MAT Case No.14 of 2024 pending before the court of learned Judge, Family Court, Bargarh to the court of learned Judge, Family Court, Sambalpur or any other court.

TRPCRL No.41 of 2026 has been filed U/s.24 of CPC for transfer of Criminal Misc. No.109 of 2019 pending before the court of learned Judge, Family



Court, Bargarh to the court of learned Judge, Family Court, Sambalpur or any other court.

2. The learned counsel for the petitioner-husband in the marriage is heard at length for one hour and forty minutes. The petitioner before this Court in TRP(C) No.142 of 2026 by filing application U/s.24 of the CPC seeks transfer of proceeding with the following prayer:

“a-Transfer Mat case no-14/2024 filed by husband/petitioner u/s-13 HMA from Hon’ble judge family court Bargarh to Hon’ble Judge family Court Sambalpur or any other court as deem fit and proper for interest of justice.

b- Pass any such further order(s)/direction(s) deemed fit and proper in the interest of justice.”
(sic)

A similar prayer has been made in TRPCRL No.41 of 2026 for transfer of Criminal Misc. No.109 of 2019 pending before the court of learned Judge, Family Court, Bargarh to the court of learned Judge, Family Court, Sambalpur or any other court.

3. In the pleadings before this Court, in the petition, unsubstantiated and unverified allegations are made against the learned Presiding Judge of the Family Court which are not in good taste.

4. The petitioner as well as his learned counsel conducting the matters before the learned Judge, Family Court seems to be aggrieved by the adverse orders passed against the petitioner and have chosen to make allegations of ‘bias’ against the learned Judge.



Without referring to any specific reason, the allegations are made in the petition because adverse orders have been passed and the narrative sought to be built seems to be the individual perception of the petitioner or may be that of the conducting counsel. Such practice has to be and is strongly deprecated by this Court.

5. It is a normal development in any pending adjudication that the court in seisin of the matter may pass adverse order/direct coercive action in accordance with law and the applicable statute. In both the petitions seeking transfer the petitioner laments about the adverse orders passed which are well within the jurisdiction of the Courts. If aggrieved the petitioner has the liberty to challenge the orders.

On being asked, how the petitioner can allege bias against presiding officer in any judicial proceeding before a trial Court, it is submitted by the learned counsel for the petitioner that though the petitioner was paying the maintenance/interim maintenance as directed by order passed by the learned Family Court in application U/s.125 of Cr.P.C. (since repealed and substituted by *pari materia* provision contained in Section 144 of BNSS, 2023) for non-compliance of the said order, the petitioner was issued NBW(non-bailable warrant).

6. In response to the said submissions and allegations which is not part of the pleadings but form



part of the submissions (proceeding being hybrid is also recorded), the learned counsel was requested to apprise this Court when the order was passed U/s.125 Cr.P.C. application, when the petitioner made the payment and when the NBW was issued for non-payment of the amount; the learned counsel does not have answer and it is submitted that she does not have the records with her. So she is unable to refer to them and answer.

7. Now, it has to be observed that the learned counsel has made the submissions/allegations without looking at the records nor referring to any record as stated by her. The minimum that can be expected when an allegation is made in Court against a learned Judge is that at least some reference should be made to the specific records and in this case the records/orders are not far to seek as the petitioner himself is a party.

8. The petitioner knows when the order was passed U/s.125 Cr.P.C. directing payment of maintenance/interim maintenance, the petitioner knows when he made the payment, the petitioner also knows if there was any default and the petitioner also knows the date when the NBW was issued. It has to be observed that non-compliance of order passed in U/s.125 Cr.P.C., itself provides mechanism of enforcement at Section 125(3), which is reproduced herein:



125. Order for maintenance of wives, children and parents.— (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.

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."

9. Upon going through the provision U/s.125(3) of Cr.P.C., it is apparent that the Court has power to issue NBW as well as power to direct arrest and detention of a person, who does not comply with the order passed U/s.125 Cr.P.C. for payment of maintenance/interim maintenance. Obviously, such



order would not be to the liking the party who has to pay.

10. When the learned counsel was asked that the petitioner should have approached the higher Court seeking redressal against the issuance of NBW, she submits that W.P.(C) No.33230 of 2025 has been filed.

On being asked that the learned counsel has to refer the order passed by the co-ordinate Bench in the said writ petition, she again submits that she does not have the copy.

By taking reference from the learned counsel the copy of order dated 26.11.2025 in W.P.(C) No.33230 of 2025 is downloaded from the official website of this Court and the order is reproduced herein:

“This matter is taken up through hybrid mode.

2. Learned Counsel for the Petitioner does not want to press this I.A.

3. Accordingly, the I.A. stands dismissed as not pressed.

Sd/- Judge

W.P.(C) No.33230 of 2025 & I.A. No.20221 of 2025

1. Heard learned Counsel for the Petitioner.

2. Issue notice on admission and stay to the Opposite Party Nos.2 & 3 by Speed Post with A.D. fixing a short returnable date indicating therein that the matter is likely to be disposed of at the stage of admission. Requisites be filed by Monday (01.12.2025).

3. As an interim measure, it is directed that no coercive action shall be taken against the Petitioner pursuant to the order dated 18.10.2025, as at Annexure-5, till the next date.



4. Tracking report of notice to Opposite Party Nos.2 & 3 be kept on record before the next date of listing

5. Urgent certified copy of this order be granted as per rules.”

11. It is submitted by the learned counsel for the petitioner that since the NBW was stayed by this Court a adverse inference should be drawn against a learned Judge who has issued the order of NBW for non-compliance of the direction to pay interim maintenance/maintenance U/s.125 Cr.P.C. in the manner directed.

12. In considered opinion of this Court, interference by this Court in a challenge to the NBW cannot ipso facto be construed to be comment upon a trial Judge, the way it is being sought to be portrayed by the learned counsel for the petitioner.

It is further ascertained that the said writ petition i.e. W.P.(C) No.33230 of 2025 is kept pending awaiting further adjudication. Significantly enough the coordinate Bench without directing stay has issued ‘notice on admission and stay’ as would be evident from the order and as an interim measure has directed that no coercive action shall be taken against the petitioner pursuant to the order dated 18.10.2025 passed by the learned Judge, trial Court.

Copy of the order dated 26.11.2025 passed in W.P.(C) No.33230 of 2025 shall be kept on record.



13. The said writ petition as available in the official website of this Court in the paperless format is also looked into. It is stated at paragraph-1 of the petition that by order dated 04.11.2022 the learned Judge, Family Court, Bargarh passed interim maintenance of Rs.5000/- per month in an application that was filed on 16.12.2019, Rs.3000/- was to be paid to the wife in the marriage and Rs.2000/- to the child from the date of filing of the interim maintenance application i.e. 16.12.2019. The further direction was to pay the maintenance within 10th of every succeeding month. The arrear was directed to be paid in 24(twenty four) equal monthly instalment in addition to the regular monthly maintenance. The further direction was to pay Rs.2000/- towards the litigation expenses. Thereafter execution case No.41 of 2023 was filed for recovery of the arrear from 16.12.2019 to 15.07.2023. The amount remaining unpaid, the petitioner-wife and the minor child filed a petition for attachment of salary before the learned Judge, Family Court for recovery of the amount the Court passed order of attachment of the salary of the petitioner for recovery of the said amount which was communicated to the concerned Block Education Officer, the petitioner being a teacher.

14. It is submitted by the learned counsel for the petitioner that the learned Family Court appears to be biased against the present petitioner as it had issued



NBW for non-compliance of order passed U/s.125 Cr.P.C.

Perusal of the petition W.P.(C) No.33230 of 2025 indicates that the amount due was from 16.12.2019 i.e. the date of filing of interim application. The execution application was filed on 05.09.2025. Therefore, from 16.12.2019 till 05.09.2025 i.e. 68 months $\times$ Rs.5,000/- = Rs.3,40,000/- was due. Therefore, even assuming that Rs.1,92,000/- was paid as stated by the petitioner till then the amount that remained unpaid is: Rs.3,40,000 - Rs.1,92,000 = Rs. 1,48,000/-.

15. The learned counsel for the petitioner though cited the decision of the Hon'ble Supreme Court in ***Pushpa Devi Saraf v. Jai Narain Parasrampur***: **(1992) 2 SCC 676: AIR 1992 SC 1133**, submits that she could not get copies of the said decision however, it is considered by this Court.

16. Section 24 of the CPC provides thus:

“24. General power of transfer and withdrawal.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or



(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

17. It is submitted by the learned counsel for the petitioner that the petitioner has filed petition addressed to the Registrar (Vigilance), High Court of Orissa on 03.02.2026, which has been sent by Speed Post on 04.04.2026 with copy to the learned Judge, Family Court, Bargarh.



Copy of the said petition is annexed to the writ application marked as Annexure-3 to the writ application.

18. In considered opinion of this Court, scope of Section 24 of the CPC does not empower this Court to deal with allegation against a Presiding Judge that may be unfounded or otherwise.

An application U/s.24 of CPC is between the parties to the litigation whereas in the present case allegation is made against the Presiding Judge and it cannot be taken up by this Court not having the determination.

Registry shall do the needful for placing the matters before the Bench having determination.

Copy of this order shall be kept in the record of TRPCRL No. 41 of 2026.

(Mruganka Sekhar Sahoo)
Judge

Radha

Signature Not Verified

Digitally Signed
Signed by: RADHARANI JENA
Reason: Authentication
Location: OHC
Date: 11-May-2026 18:34:28

