

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 8039/2024

Daljeet Singh Saluja S/o Mahendra Singh Saluja, Aged About 36 Years, R/o House No. 16/283, Choupasani Housing Board, Police Station Choupasani Housing Board, Jodhpur, Rajasthan.

----Accused Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Smt. Dharmveer Kaur W/o Shri Daljeet Singh Saluja D/o Shri Harbhajan Singh, R/o House No. 780, Khwas Ji Ka Rasta, Bakhshi Hemraj Ki Gali, Police Station Subhash Chowk, Jaipur (Rajasthan).

----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No. 8037/2024

Daljeet Singh Saluja S/o Mahendra Singh Saluja, Aged About 36 Years, - R/o House No. 16/283, Choupasani Housing Board, Police Station Choupasani Housing Board, Jodhpur, Rajasthan.

----Accused Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Smt. Dharmveer Kaur W/o Shri Daljeet Singh Saluja D/o Shri Harbhajan Singh, R/o House No. 780, Khwas Ji Ka Rasta, Bakhshi Hemraj Ki Gali, Police Station Subhash Chowk, Jaipur (Rajasthan).

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 8040/2024

Daljeet Singh Saluja S/o Mahendra Singh Saluja, Aged About 36 Years, R/o House No. 16/283, Choupasani Housing Board, Police Station Choupasani Housing Board, Jodhpur, Rajasthan.

----Accused Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Smt. Dharmveer Kaur W/o Shri Daljeet Singh Saluja D/o Shri Harbhajan Singh, R/o House No. 780, Khwas Ji Ka Rasta, Bakhshi Hemraj Ki Gali, Police Station Subhash



Chowk, Jaipur (Rajasthan).

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 8059/2024

Daljeet Singh Saluja S/o Mahendra Singh Saluja, Aged About 36 Years, R/o House No. 16/283, Choupasani Housing Board, Police Station Choupasani Housing Board, Jodhpur, Rajasthan.

----Accused Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Smt. Dharmveer Kaur W/o Shri Daljeet Singh Saluja D/o Shri Harbhajan Singh, R/o House No. 780, Khwas Ji Ka Rasta, Bakhshi Hemraj Ki Gali, Police Station Subhash Chowk, Jaipur (Rajasthan).

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 8064/2024

Daljeet Singh Saluja S/o Mahendra Singh Saluja, Aged About 36 Years, R/o House No. 16/283, Choupasani Housing Board, Police Station Choupasani Housing Board, Jodhpur, Rajasthan.

----Accused Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Smt. Dharmveer Kaur W/o Shri Daljeet Singh Saluja D/o Shri Harbhajan Singh, R/o House No. 780, Khwas Ji Ka Rasta, Bakhshi Hemraj Ki Gali, Police Station Subhash Chowk, Jaipur (Rajasthan).

----Respondents

For Petitioner(s)	:	Mr. Deepak Goyal, Advocate
For Respondent(s)	:	Mr. Vivek Choudhary, Dy.G.A.

HON'BLE MR. JUSTICE BHUWAN GOYAL
Order

10/02/2026

S.B. Criminal Misc. Petition No. 8064/2024 :

1. Matter comes up on an application for early hearing of the case.

2. The application is allowed for the reasons mentioned therein and with the consent of learned counsel for both the parties, this criminal misc. petition is being decided finally today at this stage.

S.B. Criminal Misc. Petition Nos. 8039/2024; 8037/2024; 8040/2024; 8059/2024 and 8064/2024

3. Since these criminal misc. petitions arise out of a matrimony dispute having arisen between the same parties, they are being decided by this common order.

4. These criminal misc. petitions have been filed by the petitioner against the order dated 6.11.2024 passed by Addl. Sessions Judge, Women Atrocity Cases, Jaipur Metropolitan-II in Cr. Revision Petition Nos. 42/2024, 44/2024, 43/2024, 41/2024 and 40/2024, whereby the revisional court dismissed the revision petitions filed by the petitioner and affirmed the order dated 29.7.2024 passed by ACJM No.4, Jaipur Metropolitan-II, Jaipur in case No. 31027/2024, 190/2017, 31029/2024, 251/2016, and 252/2016 titled Smt. Dharmveer Kaur Versus Daljeet Singh Saluja, by which on the applications filed by the respondent under Section 125(3) CrPC, DCP, Chopasani, Housing Board, Jodhpur was directed to arrest the petitioner and produce him in the Court, on failure to recover the maintenance amount.

5. Learned counsel for the petitioner submits that in relation to proceedings under Section 125(3) CrPC, first of all recovery warrant should have been issued and non bailable warrant could not have been issued directly. He further submits that there was no report on record with regard to levy of the amount by attachment and sale of the immovable property of the

petitioner, but the learned trial court wrongly issued the arrest warrant simultaneously. The revisional court also acted contrary to the mandatory provision of law and committed material illegality. Thus, the impugned orders dated 6.11.2024 and 29.7.2024 are liable to be quashed and set-aside.

6. In support of his contentions, he has placed reliance upon the judgment passed by the Division Bench of this Court in D.B. Criminal Reference No. 2/2020 (In Re A. Ref. U/s. 395 CrPC Versus Unknown; decided on 3.12.2021); judgment passed by the Division Bench of this Court in D.B. Cr. Revision Petition No 9 of 1993 (Smt. Vimla Versus State of Rajasthan and Anr. ; decided on 12.2.1994); judgment passed by the Bombay High Court, Nagpur Bench, Nagpur in Criminal Writ Petition No. 305/2014 (Mr. Sachin Versus Sau Sushma; decided on 6.5.2014); judgment passed by the Allahabad High court in Application u/s. 482 No. 4483 of 2022 (Vipin Kumar Versus State of UP and another; decided on 25.2.2022) and the judgment passed by the Allahabad High Court in Application U/s. 482 No. 22043 of 2023 (Deepak Singh Rajawat Versus State of UP and 2 others; decided on 13.7.2023).

7. Learned Dy. G.A. has opposed the same.

8. Heard learned counsel for the parties and perused the relevant material on record.

9. In the case of **Smt. Vimla** (supra), the Division Bench of this Court held as under:

"6. Under Section 125(3) if any person fails to comply with the order passed for maintenance, then the Magistrate may issue a warrant for levy of the amount due in the manner provided for levying fine and may sentence such person for whole or any part of each month's allowance remaining unpaid after

the execution of the warrant to imprisonment for a term which may extend to one month or until payment is sooner made. The proviso to this sub-section prohibits the issue of warrant of recovery of any amount due under that 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. Section 421 prescribes the procedure to issue warrant for levy of fine, which could be by attachment and sale of any movable property belonging to the offender or it could be recovered as an arrear of land revenue from the movable or immovable property or both of defaulter."

(Emphasis supplied by me)

10. The Bombay High Court, Nagpur Bench, Nagpur in the case of **Mr. Sachin** (supra) held as under:

"8. The Magistrate in my opinion could not have issued non bailable warrant directly. He should have followed the procedure laid down in sub-section (3) of Section 125 & 421 of the Code of Criminal Procedure. In the scheme of Code of Criminal Procedure, in the first place, the Magistrate was under obligation to issue a warrant for levy of the amount by attachment and sale of any movable property."

It was further held that:

"9. As such the first option available to the Magistrate was to issue a warrant for levying fine. If whole of the amount was recovered by adopting the procedure under Section 421 of the Code of Criminal Procedure, the question of putting the defaulter in prison did not arise. In case amount was not recovered or part of it was recovered and part of it was not recovered, then the question would have arisen as to how much sentence should be imposed on the defaulter as per the provision laid down in the Code

of Criminal Procedure. The stage of issuing warrant comes only after sentencing and not before that.”

11. In the case of **Deepak Singh Rajawat** (supra), the Allahabad High Court held as under:

“8.....

Sub-section (3) of Section 125 CrPC makes it further clear that the jurisdiction of the Magistrate for sentencing such person to imprisonment would arise only after the maintenance allowance, in whole or in part, remains unpaid after the maintenance allowance, in warrant. It is only after the sentence of imprisonment is awarded by the Magistrate under sub-section (3) of Section 125 that the occasion may arise for issuance of warrant of arrest for bringing the person concerned to Court for his committal to prison to serve out the sentence.

12. In the case of **Vipin Kumar** (supra), the Allahabad High Court held as under:

“11. Magistrate has no jurisdiction to issue warrant of arrest straight way against the person liable for payment of maintenance allowance in the event of non-payment of maintenance allowance within the time fixed by the Court without first levying the amount due as fine and without making any attempt for realization that fine in one or both the modes for recovery of that fine as provided for in clauses (a) or (b) of sub-section (1) of Section 421 CrPC say by issuance of distress warrant for attachment and sale of movable property belonging to the defaulter as contemplated under Section 421(1)(a) and without first sentencing the defaulter to imprisonment after the execution of the distress warrant.”

13. Section 125 (3) CrPC is reproduced as under:

"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."

14. The procedure for levying of fines is available under Section 421 of the Code of Criminal Procedure as under:

"Warrant for levy of fine- When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter.

15. For the aforesaid reasons, the Magistrate concerned should not have issued non bailable warrant simultaneously without there being any report available on record in relation to

the recovery warrant issued to the petitioner. Thus, the order dated 6.11.2024 passed by Addl. Sessions Judge, Women Atrocity Cases, Jaipur Metropolitan-II in Cr. Revision Petition Nos. 42/2024, 44/2024, 43/2024, 41/2024 and 40/2024, and the order dated 29.7.2024 passed by ACJM No.4, Jaipur Metropolitan-II, Jaipur in case No. 31027/2024, 190/2017, 31029/2024, 251/2016, and 252/2016 qua arrest of the petitioner are quashed and set-aside. Rest part of the orders dated 6.11.2024 and 29.7.2024 passed by the courts below are maintained.

16. A copy of this order be placed in each connected file.

(BHUWAN GOYAL),J

DK/7-11