No. Gen/XIX/Misc/1340/2025/2016 **Dated:** 19/12/2025

From : Registrar General,
Rajasthan High Court,
Jodhpur.

To : All the District & Sessions Judges.

Sub. : Circulation of Order dated 10.10.2025 passed by Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Revision Petition No. 104/2025, Deevan Singh Vs. State of Rajasthan & others.

Sir,

While enclosing herewith a copy of Order dated 10.10.2025 passed by Hon'ble the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Revision Petition No. 104/2025, Deevan Singh Vs. State of Rajasthan & others, I am under direction to request you to circulate the same amongst all the Judicial Officers including the officers of Family Courts posted in your Judgeship for information and necessary compliance of the said order.

Yours sincerely,

Encl. : As above

19.12.2025

REGISTRAR (ADMN.)

1950
10.1.25

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S. B. CRIMINAL REVISION APPLICATION NO.

104 /~~2024~~2025

1. Deevan Singh S/o Late Shri Harvir Singh, R/o Imartan Ka Pura, Police Thana – Sadar Karauli, District- Karauli.

...APPLICANT

VERSUS

1. State Of Rajasthan through P. P.

2. Vikesh W/o Deevan Singh, D/o Late Sukaram, Age-23 years, R/o Imartan Ka Pura, Police Thana – Sadar Karauli, District- Karauli at present R/o Anijara, Police Station- Maasalpur, District- Karauli.

...NON-APPLICANT



IN THE MATTER OF SECTION 438 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023;

;READ WITH SECTION 442 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023;

; READ WITH SECTION 19 (4) OF THE FAMILY COURTS ACT, 1984;

(2)

FOR QUASHING OF THE ORDER DATED 07.06.2024 PASSED BY SHRI PRAHLAD RAI SHARMA, R.J.S. (DISTRICT JUDGE CADRE), PRESIDING OFFICER, FAMILY COURT, KARAULI, (RAJ.) IN CRIMINAL MISC. CASE NO. 82/2024 TITLED "VIKESH VERSUS DEEVAN SINGH" UNDER SECTION 125 CODE OF CRIMINAL PROCEDURE, 1973 WHEREBY A MONTHLY MAINTENANCE OF RS. 12,000/- (RUPEES TWELVE THOUSAND ONLY) HAS BEEN GRANTED.

AND ALL THE FURTHER PROCEEDINGS ARISING THEREOF.



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 104/2025

Deevan Singh S/o Late Shri Harvir Singh, R/o Imartan Ka Pura, Police Thana Sadar Karauli District Karauli

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Vikesh W/o Deevan Singh D/o Late Sukaram, R/o Imartan Ka Pura, Police Thana Sadar Karauli District Karauli At Present R/o Amijara Police Station Maasalpur District Karauli

----Respondents

For Petitioner(s) : Mr. Rajendra Rathore,
Mr. Ajay Poonia and
Mr. Lokesh Dholpuria

For Respondent(s) : Mr. Amit Punia, Addl.GA/PP
Mr. Dhura Ram

JUSTICE ANOOP KUMAR DHAND

Order

10/10/2025

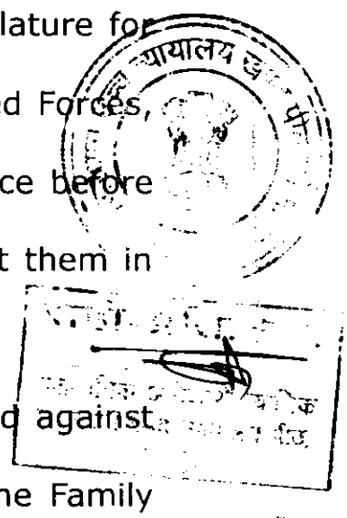
Reportable

1. A summon is a Court order or formal communication to command an individual/rival party to appear in the Court and to answer the claims of other side initiated against him. Order 5 of Code of Civil Procedure (for short, 'CPC') and Order 31 of the General Rules (Civil & Criminal) 2018 deals with the procedure and process of service of summons on the oppose party.

According to the Black's Law Dictionary, summon means to command (a person) by service of a summon, to appear in the Court. The purpose of issuing a summon is to inform him

and give him a fair opportunity to represent his side. This practice is based on the principle of natural justice which is provided under the maxim 'audi alteram partem' which means to hear both the parties.

2. The Army, the Air Force and the Navy is collectively known as the Armed Forces which are highly organized and disciplined forces and are specially designed for carrying out battles, protecting the State from the threat of external forces and to conduct other special operations. It is highly maintained and authorized by the respective sovereign State, with its members having a separate military uniform. Special procedures/processes have been made by the Legislature for service of summons upon the members of the Armed Forces, i.e., Sailors, Soldiers and Airmen for their appearance before the Court of law as and when a case is filed against them in their personal capacity.



3. The instant revision petition has been preferred against the impugned order dated 07.06.2024 passed by the Family Court, Karauli, by which the application submitted by the respondent No.2 under Section 125 Cr.P.C. has been allowed ex-parte and a direction has been issued to the petitioner to pay a maintenance of Rs.12,000/- per month, to the respondent No.2.

4. Learned counsel for the petitioner submits that the petitioner is a Sepoy and is serving in the Indian Army. At the relevant time, he was posted in the Operational Exigencies Treacherous High Altitude area till September, 2024. Counsel

submits that an application under Section 125 Cr.P.C. was submitted by the respondent No.2 against the petitioner before the Family Court, wherein notices were issued, but the same were never served upon the petitioner, hence, the notice was sent on the WhatsApp mobile number of the petitioner bearing No.97973XXXXX. Counsel submits that a copy of the screenshot of the WhatsApp message was produced on the record and that was treated as sufficient service for passing the ex-parte order against the petitioner and accordingly, the order impugned has been passed. Counsel submits that as per the provisions contained under Order 31 Rule 5 of the General Rules (Civil & Criminal), 2018, the process to the Soldier, Sailor and Airman is required to be sent for service to his Commanding Officer together with a copy, which is required to be retained by the person concerned. Counsel submits that as per the mandatory provisions contained under the aforesaid Rule 5 of Order 31, sufficient time shall be given for making arrangements for relieving the concerned person, but in the instant case, the aforesaid process/procedure was not followed and only on the basis of a WhatsApp message, the service upon the petitioner was treated as complete. Counsel submits that the petitioner could not get sufficient opportunity to make his appearance before the Family Court and in that eventuality, the ex-parte order has been passed against the petitioner, which is not sustainable in the eyes of law and is liable to be quashed and set-aside.

5. *Per contra,* counsel appearing on behalf of the respondent opposed the arguments raised by counsel for the petitioner and submitted that the summons were sent by the Family Court to the petitioner on his WhatsApp number and the same were served upon the petitioner, hence, the petitioner cannot take this excuse that he was not aware about filing of the application against him under Section 125 Cr.P.C. by the respondent No.2. Counsel submits that in-spite of having knowledge of pendency of the proceedings under Section 125 Cr.P.C., the petitioner has deliberately failed to put in his appearance before the Family Court. Hence, under these circumstances, the Family Court has not committed any error in passing the ex-parte order against the petitioner directing him to pay a maintenance of Rs.12,000/- per month to the respondent No.2, therefore, interference of this Court is not warranted and the instant petition is liable to be rejected.

6. Heard and considered the submissions made at the Bar and perused the material available on record.

7. Perusal of the record indicates that marriage of the parties was solemnized on 12.07.2013 and owing to a matrimonial dispute between them, both of them get separated and the respondent No.2 approached the Family Court by way of filing an application under Section 125 Cr.P.C. seeking maintenance against the petitioner. This fact is not in dispute and the same was narrated in the application itself that the petitioner is posted in the Indian Army as Sepoy/Constable and he is earning Rs.52,000/- per month.

When the aforesaid application was submitted by the respondent No.2 before the Family Court, on three different occasions, summons were issued to the petitioner by the Family Court, but the order-sheets reveal that the said summons were never served upon the petitioner. Therefore, under these circumstances, a WhatsApp message was sent with regard to the aforesaid summons to the petitioner on his mobile phone bearing No.97973XXXXX. It appears that a screenshot of the aforesaid whatsapp message was produced before the Family Court and the service upon the petitioner was treated as sufficient and accordingly, the ex-parte proceedings were initiated against him and finally the ex-parte order was passed against the petitioner.

8. Now, the question which remains for consideration of this Court is 'Whether service of summons upon a person, who is posted as Soldier, Sailor or Airman in the Armed Forces, sent upon his WhatsApp number can be treated as sufficient for proceeding ex-parte against him ?'.

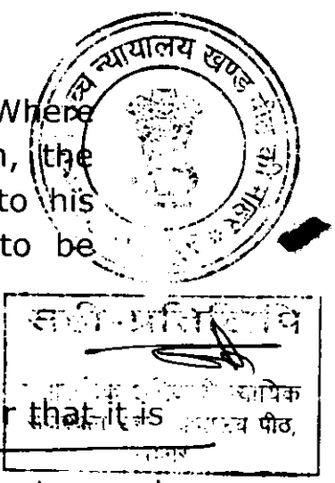
9. The provisions contained under Order 31 Rule 5 of the General Rules (Civil & Criminal), 2018 deals with such like situation, where proceedings have been initiated against the Soldier, Sailor or Airman posted in the Indian Armed Forces. For ready reference, the relevant provision contained under Order 31 Rule 5 of the Rules, 2018 is reproduced as under:

> "**5. Process of soldiers, sailors and airmen**- Process of officer, soldier, sailor or airman, shall be sent for service to his Commanding Officer, together with a copy to be retained by the person concerned, in such cases, sufficient time shall be

given to make arrangements for relieving the concerned person."

10. Even Order V Rule 28 of the Code of Civil Procedure deals with the provisions and procedure for service of summons on Soldiers, Sailors or Airmen, which lays down as under:

> "**Order V Rule 28 CPC**
> **Service on soldiers, sailors or airmen.-**Where the defendant is a soldier, sailor or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant."



11. Perusal of the aforesaid provision makes it clear that it is mandatory for the Presiding Officer/Process Server to send the summons for service to his Commanding Officer of such Soldier, Sailor or Airman along with a copy, which is required to be retained by the person concerned. The aforesaid exercise is required for granting sufficient time for making necessary arrangements for relieving such person from the operations of the Armed Forces. A certificate dated 24.12.2024 has been produced on record, which was issued by the Captain Officiating Adjutant for Commanding Officer, which indicates that at the relevant time, the petitioner was posted in the Battalion, which was involved in Operational exigencies in treacherous High Altitude Area upto September, 2024. Meaning thereby, the petitioner was posted in operational activities of the Army and he was not to be relieved till September, 2024 and in the meantime, the

impugned order has been passed on 07.06.2024. Hence, under such circumstances, the service of summons upon the petitioner on his WhatsApp mobile number cannot be treated as sufficient in view of the mandate contained under Order 31 Rule 5 of the General Rules (Civil & Criminal), 2018 and under Order V Rule 28 CPC.

12. In the considered opinion of this Court, the petitioner has been prevented with sufficient cause for giving his personal appearance before the Family Court. The Family Court has failed to comply with the mandatory provisions contained under Order 31 Rule 5 of the General Rules (Civil & Criminal), 2018 and under Order 5 Rule 28 CPC. Hence, the impugned order has been passed in gross violation of the principles of natural justice, as no reasonable opportunity of hearing was provided to the petitioner before passing the impugned order against him. On this Count alone, the order impugned passed by the Family Court is not sustainable in the eyes of law and is liable to be and is hereby quashed and set-aside.

13. The matter is remitted to the Family Court for passing fresh order after affording due opportunity of hearing to the petitioner as well as the respondent No.2.

14. Needless to observe that fresh order would be passed by the Family Court expeditiously, as early as possible, preferably within a period of four months from the date of receipt of the certified copy of this order.

15. Let a copy of this order be circulated by the Registrar (General) among all the Judicial Officers including the officers posted in the Family Courts of the State.

(ANOOP KUMAR DHAND),J

KuD/35

