IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3396]

District Judge's Court, Vizia
23 JUL 2026
Administrative C

TUESDAY,THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

**PRESENT**

**THE HONOURABLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CRIMINAL REVISION CASE NO: 946/2024**

**Between:**

...PETITIONER

**AND**

1.

2.

...RESPONDENT(S):

RMO-4978/23/7/26

**Counsel for the Petitioner:**
1. THANDAVA YOGESH

**Counsel for the Respondent(S):**
1. M.S.BANU PRASAD RAO

**The Court made the following:**

**ORDER**:

**1.** The instant Criminal Revision Case is filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 against the Order dated 14.05.2024 passed in F.C.O.P.No.199 of 2019 on the file of Family Court-cum-V Additional District Court, Tirupati.

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D.J.

2. Heard Sri Thandava Yogesh, learned counsel for the Petitioner and Sri M.S.Banu Prasad Rao, learned counsel for Respondents.

3. Learned counsel for the Petitioner would submit that the impugned order was passed based on the evidence that was taken up in the form of evidence affidavit, and it cannot be sustained as the same is vitiated for non-compliance with the procedure prescribed under Section 126(2) Cr.P.C (Section 145(2) of BNSS). Learned counsel would further submit that the learned trial Judge granted maintenance without considering the fact that Respondent No.1/wife has been working as a software employee. It is further submitted that the Petitioner has resigned his job and has no avocation and means to pay such a huge amount of maintenance awarded by the trial Court. It is contended that the trial Court has not considered the application filed under Section 91 Cr.P.C for calling the income tax particulars of the Petitioner to prove his income.

4. *Per contra*, learned counsel for respondents submitted that proceedings under Section 125 Cr.P.C., (Section 144 of BNSS) are quasi-civil in nature and not penal proceedings. Therefore, the procedure contemplated under Order XVIII Rule 4 of the Code of Civil Procedure may be adopted. It was further contended that recording evidence by way of affidavit is permissible in law and, consequently, the impugned order does not suffer from any legal infirmity or vitiating defect. Accordingly, it was prayed that the petition be dismissed.

**5.** This Court has carefully considered the rival submissions and perused the material available on record. In the case on hand, on the application filed by the Respondents/Wife and minor son under Section 125 Cr.P.C (Section 144 of BNSS) seeking monthly maintenance, the learned trial Judge, after full-fledged trial, partly allowed the said petition and granted monthly maintenance of Rs.30,000/- to the wife and Rs.20,000/- to the minor son.

**6.** The main contention advanced by the learned counsel for the Petitioner is twofold. Firstly, it is contended that the learned Trial Judge committed a procedural illegality in receiving and acting upon the chief-examination affidavit of Respondent No.1 in a proceeding under Section 125 Cr.P.C. (Section 144 of BNSS), contrary to the mandatory procedure prescribed under Section 126(2) Cr.P.C. (Section 145(2) of BNSS). Secondly, the Trial Court proceeded to determine the maintenance claim without ensuring compliance with the binding directions issued by the Hon'ble Supreme Court in **Rajnesh v. Neha**[1], thereby rendering the adjudication legally unsustainable.

**7.** In the light of the aforesaid submissions, the question that falls for consideration is whether the procedure adopted by the learned trial Judge in receiving evidence by way of chief-examination affidavit and adjudicating the maintenance claim without adherence to the disclosure requirements mandated in ***Rajnesh's case referred to supra***, is legally sustainable?

**8.** The first limb of the challenge relates to the manner in which evidence was received by the Trial Court. The answer to this issue must necessarily be

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[1] (2021) 2 SCC 324

gathered from the language employed in Section 126(2) Cr.P.C(Section 145 (2) of BNSS). The provision stipulates that "all evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader." The legislature has consciously employed the expression "shall", thereby making the requirement mandatory in nature. The provision does not contemplate evidence being tendered by way of affidavits nor does it contain any enabling provision authorising the Court to substitute oral chief-examination with evidence affidavit.

**9.** The statutory mandate becomes more evident when Section 126(2) (Section 145 (2) of BNSS) is read harmoniously with Section 254 Cr.P.C(Section 277 of BNSS)., which prescribes the procedure for recording evidence in summons cases. Chapter IX of the Code envisages that evidence is to be adduced before the Court and recorded in the presence of the opposite party. Therefore, the procedure contemplated under Order XVIII Rule 4 CPC, which permits examination-in-chief by way of affidavit, cannot be imported into proceedings under Section 125 Cr.P.C(Section 144 of BNSS) in the absence of an express statutory provision.

**10.** The issue is no longer *res integra*. A Coordinate Bench of this Court in ***Veerisetty Ramesh Babu vs. Veerisetty Ramadevi and another***[2], after an elaborate consideration of Sections 125 (Section 144 of BNSS), 126(2)

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[2] Crl.Revision Case No.1009 of 2019, dated 24.04.2000

(Section 145 (2) of BNSS) and 254 Cr.P.C(Section 277 of BNSS)., and Section 10 of the Family Courts Act, 1984, categorically held that evidence in proceedings under Section 125 Cr.P.C(Section 144 of BNSS) must be recorded strictly in accordance with the procedure prescribed under the Code of Criminal Procedure and that chief-examination by way of affidavit is legally impermissible. The Coordinate Bench further held that even when such proceedings are entertained by a Family Court, Section 10(2) of the Family Courts Act mandates adherence to the procedure prescribed under Chapter IX of the Code and excludes the application of Order XVIII Rule 4 CPC.

**11.** Proceedings under Section 125 Cr.P.C(Section 144 of BNSS) are intended to provide a summary and efficacious remedy to a neglected spouse, child or parent. The enquiry is confined to limited questions, namely, whether the claimant is entitled to maintenance, whether there has been neglect or refusal to maintain, and whether the respondent has sufficient means to provide maintenance. The proceedings are not intended to become a forum for adjudicating every matrimonial dispute between the parties.

**12.** In proceedings under Section 125 Cr.P.C. (now Section 144 of BNSS), if parties are allowed to file detailed chief examination affidavits and include allegations about several other disputes, such as divorce, restitution of conjugal rights, custody matters, criminal cases under Section 498-A IPC, Domestic Violence Act proceedings, and similar cases, the scope of the inquiry becomes unnecessarily wide. This leads to lengthy cross-examination on issues not relevant to the maintenance claim and causes delays in the

proceedings. The counsel for the opposite party shall not undertake a roving or fishing cross-examination on each and every allegation contained in the affidavit, particularly those pertaining exclusively to disputes pending before other competent forums. The cross-examination shall be confined to the facts which are relevant and material for adjudication of the maintenance claim.

**13.** The Court shall not permit unnecessary questioning on matters relating to the merits of pending matrimonial, criminal, guardianship, domestic violence or other collateral proceedings, as the same would unnecessarily enlarge the scope of enquiry, prolong the trial and defeat the object of providing expeditious relief under Section 125 Cr.P.C.(Section 144 BNSS). More importantly, it dilutes the statutory provision under Section 126(2) Cr.P.C(Section 145(2) of BNSS), which requires evidence to be taken before the Court in the presence of the opposite party. After considering the decisions of the Bombay High Court, this Court in **V.D. Solomon v. V. Solomon Mary**[3], and the common High Court in **Gollamudi Ramesh v. Modukuri Nagamani,**[4] the Coordinate Bench concluded that evidence by way of chief examination affidavit is legally impermissible in proceedings under Section 125 Cr.P.C(Section 144 of BNSS) and that any order passed on the basis of such evidence stands vitiated for non-compliance with the mandatory procedure prescribed under Section 126(2) Cr.P.C(Section 145(2) of BNSS).

**14.** In view of the above discussion and the judgments referred to *supra,* this Court has no hesitation in holding that the learned Trial Judge committed

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[3]2003 SCJ Online (AP) 1440
[4]2017 (2) HLT (Cri)579

a procedural irregularity going to the root of the matter in receiving and acting upon chief-examination affidavit evidence contrary to the mandate of Section 126(2) Cr.P.C(Section 145(2) of BNSS).

**15.** The second limb of the Petitioner's challenge concerns the failure of the Trial Court to comply with the directions issued by the Hon'ble Supreme Court in ***Rajnesh's case referred to supra***. The Hon'ble Supreme Court has mandated that in maintenance proceedings both parties shall file detailed affidavits disclosing their assets, income, expenditure, liabilities and financial capacity. The object of the direction is to enable the Court to undertake an objective assessment of the financial status of the parties and to determine maintenance on the basis of verified financial disclosures rather than mere assertions.

**16.** A perusal of the record discloses that the Trial Court proceeded to adjudicate the maintenance claim without ensuring strict compliance with the disclosure requirements prescribed in ***Rajnesh's case referred to supra***. The Court did not undertake the exercise contemplated by the Hon'ble Supreme Court for assessing the financial capacity of the parties. Consequently, the determination of maintenance was rendered without adhering to the guidelines of the Hon'ble Supreme Court which are essential for a fair and transparent adjudication.

**17.** Thus, the impugned order suffers from a dual infirmity. Firstly, the evidence relied upon by the Trial Court was received in a manner contrary to the mandatory procedure prescribed under Section 126(2) Cr.P.C(Section

145(2) of BNSS). Secondly, the adjudication was undertaken without ensuring compliance with the binding directions of the Hon'ble Supreme Court in ***Rajnesh's case referred to supra***. Both defects strike at the legality of the adjudicatory process and cannot be treated as mere procedural irregularities.

**18.** Once it is found that the evidence was received contrary to the procedure mandated by law, the findings recorded on the basis of such evidence cannot be sustained. Likewise, the failure to secure the financial disclosures mandated by ***Rajnesh's case referred to supra*** deprives the Court of the foundational material necessary for a proper determination of maintenance. In view of the said infirmities, the impugned order becomes unsustainable in law.

**19.** During the course of hearing, learned counsel appearing on either side fairly submitted that the interim maintenance directed by a Coordinate Bench of this Court while granting stay may continue to be paid and that the matter may be remanded to the Trial Court for fresh consideration. In view of the finding on the procedural illegality, this Court is not inclined to render any finding on the other contentions raised by either party regarding the earning capacity of the wife, the financial status of the Petitioner, or the application filed under Section 91 Cr.P.C., leaving all such issues open for consideration by the Court below.

**20.** Accordingly, the Criminal Revision Case is disposed of. The matter is remanded to the trial Court to record the evidence afresh as contemplated under Section 126(2) Cr.P.C(Section 145(2) of BNSS) and dispose of the

case on merits in accordance with law, as expeditiously as possible preferably within two months from the date of receipt of copy of this order. Petitioner shall continue to pay the monthly maintenance as ordered by the Coordinate Bench of this Court while granting interim stay, i.e., 50% of the monthly maintenance awarded by the trial Court, till the disposal of the matter afresh. The Registry is directed to circulate a copy of this order to all the Judicial Officers in the District Judiciary across the State, for information and guidance, particularly with regard to the mandatory compliance of the procedure contemplated under Section 126(2) Cr.P.C (Section 145(2) of BNSS).

Pending miscellaneous applications, if any, shall stand closed.

**Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

Date:24.03.2026
**Note: L.R Copy to be marked**
**B/o.**
*Dinesh*

**HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**Crl.R.C.No.946 of 2024**

**Dt.24.03.2026**

*Dinesh*

**IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI**

**CRIMINAL REVISION CASE No.946 of 2024**

**Between:**

**...PETITIONER**

**AND**

1.

2.

**...RESPONDENT(S):**

DATE OF JUDGMENT PRONOUNCED: 24.03.2026

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes/No

3. Whether Her Lordship wish to see the fair copy of the Judgment? Yes/No

**DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

*** THE HON'BLE DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**+ CRIMINAL PETITION No.946 of 2026**

**% 24.03.2026**

**Between:**

**...PETITIONER**

**AND**

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**...RESPONDENT(S):**

! Counsel for Petitioner : Sri Thandava Yogesh

^ Counsel for Respondents : Sri M.S.BANU PRASAD RAO

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> Head Note:

? Cases referred:

1. **(2021) 2 SCC 324**
2. **Crl.Revision Case No.1009 of 2019, dated 24.04.2000**
3. 2003 SCJ Online (AP) 1440
4. 2017 (2) HLT (Cri) 579

This Court made the following:

District Court, Vizianagaram,
Date : .07.2026.

Copy of ORDER dt.24.03.2026 in Criminal Revision Case No. 946/2024 on the file of Hon'ble High Court of Andhra Pradesh, Amaravathi, received in this Court in R.No. 4978 dt.23.07.2026, communicated to all the Judicial Officers in the Unit of Vizianagaram District Judiciary, for information.

**True Copy / By Order**

Chief Administrative Officer,
District Court, Vizianagaram.

Sd/ M. Babitha

**Principal District Judge,**
**Vizianagaram.**

**Copy to :**

The System officer, e-Courts Project, District Court, Vizianagaram, with a direction to send the copy of the same **to all the Judicial Officers relating to Vizianagaram District Judiciary, through their respective official mails** and to upload the same in District Court website **vizianagaram.dcourts.gov.in** and also place the same in the **group of Chief Ministerial Officers** of Vizianagaram Judicial District.

**Dis.No.** 3171 **Date:** 24.07.2026.