



2026:AHC-LKO:21677

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 2574 of 2026

Smt. Archana Mishra

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko.
And Another

.....Respondent(s)

Counsel for Petitioner(s) : Sanjeev Kumar Mishra
Counsel for Respondent(s) : G.A.

[A.F.R.]

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri Amrendra Nath Tripathi, the learned Senior Advocate assisted by Shri Sanjeev Kumar Mishra, the learned counsel for the petitioner and Shri Mohd. Asif Khan, the learned AGA-I for the State.

2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has sought quashing of orders dated 12.12.2025 and 21.02.2026 passed by the learned Special Chief Judicial Magistrate (Custom), Lucknow in Criminal Case No.3894 of 1999 (*State v. Sahdev Singh and Ors.*).

3. The learned AGA-I has raised a preliminary objection that in view of the law laid down by the Hon'ble Supreme Court in the case of **Neeta Singh and Ors. v. State of U.P. and Ors.**; 2024 SCC OnLine SC 5761, a judicial order passed by criminal courts cannot be challenged by filing a writ petition under Article 226 of the Constitution of India and such an order can only be challenged by filing a petition under Article 227 of the Constitution of India.

4. Shri Amrendra Nath Tripathi, Senior Advocate has disputed this objection raised by the learned AGA-I and he has submitted that **Neeta Singh (Supra)** has been decided following the judgment of the Hon'ble Supreme Court in the case of **Radhey Shyam and Ors. v. Chhabi Nath and Ors.**; (2015) 5 SCC 423 whereas in para-9 of the judgment in the case of **Radhey Shyam (Supra)**, the Hon'ble Supreme Court has held that :-

"Certiorari' may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding

or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances, vide Halsbury, 2 Edn., Vol IX, p. 880. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess, vide Income Tax Special Purposes V Fuller¹⁵, R. Bunbury Commissioners"

5. Shri Tripathi has submitted that in view of the law laid down by the Hon'ble Supreme Court in **Radhey Shyam** (Supra) as the impugned order has been passed without jurisdiction, a writ petition seeking issuance of a writ of certiorari would lie.

6. The aforesaid passage relied upon by the learned counsel for the petitioner has been taken from a judgment of the Hon'ble Supreme court in the case of **T.C. Basappa v. T. Nagappa; AIR 1954 SC 440**, which has been quoted in para-10 of the judgment in the case of **Radhey Shyam** (Supra). However, this has not been followed or approved by the Hon'ble Supreme Court in the case of **Radhey Shyam** (Supra).

7. After referring to the aforesaid judgment in the case of **T.C. Basappa** (Supra), the Hon'ble Supreme Court referred to numerous other subsequent judgments and concluded that the judicial orders of civil courts are not amenable to a writ of certiorari under Article 226 of the Constitution of India and jurisdiction under Article 227 of the Constitution of India is distinct from the jurisdiction under Article 226 of the Constitution of India.

8. In **Neeta Singh** (Supra), the Hon'ble Supreme Court has held as follows:-

*"3. We have no doubt in our mind about the contours of jurisdiction of a high court when a challenge is presented asserting that the impugned FIR ought to be quashed on the settled parameters. However, sight cannot be lost of the settled legal position that it is entirely within the discretion of a high court whether to interfere or not when other remedies are available. If during the pendency of a writ petition under Article 226 of the Constitution before a high court where an FIR is challenged the investigation is completed and charge-sheet filed, in pursuance whereof the competent criminal court takes cognizance of the offence, the court would be disabled in proceeding with the writ petition owing to a judicial order having intervened. We can profitably refer to the decision of the bench of three Judges of this Court made on a reference in **Radhey Shyam v. Chhabi Nath**. While disapproving the view expressed in **Surya***

Dev Rai v. Ram Chander Rai, it was held that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226. We may also note from such decision that upon considering decisions of high authority, a principle of law was laid down that challenge to judicial orders could lie by way of an appeal or a revision or under Article 227 of the Constitution and not by way of a writ under Articles 226 and 32.

4. The underlying reason why judicial orders are not amenable to challenge in a writ petition under Article 226 of the Constitution seems to be that such orders cannot be legitimately claimed to have been passed by the presiding officer of a court in breach or violation of a fundamental right, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari in exercise of high prerogative writ jurisdiction of the high courts. After all, should any right of a person be infringed as a consequence of a judicial order, the laws provide for the fora where such order is amenable to challenge and it is such fora, which ought to be approached for redress of one's grievance. This position flows from Constitution Bench decisions of this Court in *Naresh Shridhar Mirajkar v. State of Maharashtra* and *Rupa Ashok Hurra v. Ashok Hurra*, as well as the decision of a bench of three Judges in *Sadhana Lodh v. National Insurance Co. Ltd.*

5. Although *Radhey Shyam* (supra) dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution, a fortiori, a judicial order passed by a criminal court cannot also be challenged in a writ petition under Article 226."

9. The legal position has been clarified by the Hon'ble Supreme Court and there is no doubt that after the judgment rendered by the Hon'ble Supreme Court in the case of **Neeta Singh** (Supra), the High Courts stand disabled from entertaining a writ petition seeking issuance of writ of certiorari and thereby examining the validity of a judicial order under Article 226 of the Constitution of India.

10. Therefore, I am of the considered view that the instant Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of

certiorari for quashing of the impugned orders dated 12.12.2025 and 21.02.2026 passed by the learned Special Chief Judicial Magistrate (Custom), Lucknow, is not maintainable.

11. Accordingly, the present Writ Petition filed under Article 226 of the Constitution of India is **dismissed** as not maintainable at the admission stage.

12. The petitioner shall have liberty to file a fresh petition under Article 227 of the Constitution of India.

13. Let the certified copies filed along with the Writ Petition be returned to the learned counsel for the petitioner after retaining their photocopies on record.

March 26, 2026

-Amit K-

(Subhash Vidyarthi,J.)