

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.689 of 2015**

Bisahu Ram S/o. Bala Ram, aged about : 50 years, Caste : Dhobi, R/o. Kapan, Tahsil : Akaltara, Police Outpost : Naila, Revenue and Civil District : Janjgir-Champa (CG)

---Petitioner**Versus**

Akhilesh Pratap Rajak S/o. Bisahu Ram, aged about : 28 years, Caste : Dhobi, Permanent R/o. Kapan, Tahsil : Akaltara, Police Outpost : Naila, Revenue and Civil District : Janjgir-Champa (CG), Present R/o. Narayanpur, 16 Bataliyan, Narayanpur, District : Narayanpur (CG)

---Respondent

For Petitioner : Mr. Pushpendra Kumar Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****21/08/2015**

1. Invoking the revisional jurisdiction of this Court, petitioner-Bisahu Ram (father of respondent-Akhilesh Pratap Rajak) has filed this revision questioning the order dated 24.6.2015 passed by the Judge, Family Court, Janjgir-Champa, in Case No.26/14, by which the said Court has rejected an application filed by the petitioner under Section 125 of the Cr.P.C claiming monthly maintenance from his son on the ground of lack of territorial jurisdiction holding that the Family Court, Janjgir-Champa has no territorial jurisdiction to entertain and consider the present application.

2. Mr.Pushpendra Kumar Patel, learned counsel appearing for the petitioner would submit that order passed by the Family Court, Janjgir-Champa rejecting his application holding that by virtue of Section 126(1) (a) of the Cr.P.C., application for maintenance filed by the petitioner/father at the

Family Court, Janjgir-Champa is unsustainable and bad in law. He would further submit that the respondent is resident of village Kapan, District Janjgir-Champa, which comes within the territorial jurisdiction of the Family Court, Janjgir-Champa, but presently he is residing at Narayanpur, District Narayanpur, therefore, the Family Court, Janjgir-Champa would have entertained and considered the application for maintenance filed by the petitioner and as such, the order of the Family Court runs contrary to the specific provisions contained in Section 126(1) (a) of the Cr.P.C. and therefore, present revision petition be entertained for final hearing in the interest of justice.

3. In order to consider the point, it would be appropriate at this stage to notice Section 126 (1) (a), (b) and (c) of the Cr.P.C. which states as under:-

“126. Procedure.-(1) Proceedings under section 125 may be taken against any person in any district-

(a) where he is, or

(b) where is or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.”

4. As per Section 126(1) (a) of the Cr.P.C., an application for claiming maintenance has to be filed where the person from maintenance is claimed lives and is meant for father or mother. Section 126 (1) (b) and (c) has been enacted with respect to claim of maintenance by wife and children.

5. The question of law involved and to be considered in this revision petition is no longer res-intergra and stands authoritatively decided by the Supreme Court in following decisions:-

5.1 Way back, in the year 1963 in the matter of **Jagir Kaur v.**

Jaswant Singh¹ their Lordships of the Supreme Court have considered the legal position relating to proper adjudication and held as under:-

“The crucial words of sub-section (8) are, ‘resides’, ‘is’ and ‘where he last resided with his wife’. Under the Code of 1882 the Magistrate of the district where the husband or father, as the case may be, resided only had jurisdiction. Now the jurisdiction is wider. It gives three alternative forums. This in our view, has been designedly done by the legislature to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. The proceedings under this section are in the nature of civil proceedings, the remedy is a summery one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language.’

6. The meaning of word ‘where he is’ as provided in Section 126(1)(a) of the Cr.P.C. came to be considered again in **Vijay Kumar Prasad v. State of Bihar and others**² in which it has been held by their Lordships of the Supreme Court that application by father or mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.

Paragraphs 13 and 14 of the report as under:-

“13. it is to be noted that clauses (b) and (c) of sub-section (1) of Section 126 relate to the wife and the children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents. A bare reading of the section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the

¹ AIR 1963 SC 1521

²(2004) 5 SCC 196

purpose of Section 126 of the Code.

14. The basic distinction between Section 488 of the old Code and Section 126 of the code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing on the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature. Unlike clauses (b) and (c) of Section 126(1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.”

7. The law laid down by the Hon’ble Supreme Court in **Vijay Kumar Prasad’s** case (supra) and **Jagir Kaur’s** case (supra) has been followed and reiterated again by their Lordships of the Supreme Court slightly recently in the matter of **Dawalsab v. Khajasab**³. Paragraphs 5 and 11 of the report as under:-

“5. In the said decision in **Vijay Kumar Prasad** case, while taking notice of another decision of this Court in **Jagir Kaur v. Jaswant Singh** (supra), this Court held that the expression “is” has to be applied to the place where the person from whom maintenance is sought is normally available and cannot be construed to be a mere fleeting presence.

11. The wordings have been interpreted by the High Court and the Family Court to mean that the petition ought to have been filed in Syndagi where the respondent (son of the appellant) was working. Both the learned Family Court Judge and the High Court appear to have missed the fact that an

³(2009) 14 SCC 660

application under Section 125 CrPC has to be taken against any person in any district where the person is. In the instant case, Syndagi also falls within Bijapur District. Accordingly, under Section 126(1)(a) CrPC, the jurisdiction for filing any proceeding under Section 125 would be in Bijapur itself where the Family Court for the district is situated and since Syndagi is within the said district.”

8. On the basis of law laid down by the Supreme Court in the aforementioned cases, it is quite vivid that parents i.e. father-mother have to file application for maintenance in the Family Court at a place where their son resides. Undisputedly, in the case in hand, the petitioner’s son resides at Narayanpur, District Narayanpur, whereas the application was filed by the petitioner for maintenance against the respondent at the Family Court, Janjgir-Champa, therefore, the Family Court, Janjgir-Champa has no territorial jurisdiction to entertain the application for maintenance filed by the petitioner and as such, the Family Court, Janjgir-Champa has rightly directed return of the application for maintenance invoking Order 7 Rule 10 of the Code of Civil Procedure to be presented before the jurisdictional Family Court for hearing and disposal in accordance with law.

9. Consequently, I do not find any jurisdictional error in the order impugned. The revision *sans merit* deserves to and is accordingly dismissed at the admission stage itself without notice to other side.

10. Certified copy as per rules.

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-