

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.209 of 2017**

Shri Manish Prakash Saval, S/o Late Shri Suresh Prakash Saval, aged about 24 years, R/o Village Aadhaval, Nayapara, Near Petrol Pump, Post Aadhaval, P.S. Bodhghat, Tahsil Jagdalpur, District Bastar (CG)

---- Applicant**Versus**

Smt. Neha Rani Saval, W/o Shri Manish Prakash Saval, aged about 23 years, present R/o through: Ariansingh, Tankapara, Ward No.15, Near Vesaliyan School, Rajnandgaon, District Rajnandgaon (CG)

---- Respondent

For Applicant	:	Mrs.Renu Kochar, Advocate
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Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****27/02/2017**

1. The applicant herein raised an objection in continuance of maintenance application filed by the respondent herein (wife) under Section 125 of the CrPC is not maintainable as the Judge, Family Court, Rajnandgaon has no territorial jurisdiction to entertain the same because the respondent/wife lastly resided at Jagdalpur. The Family Court has passed the impugned order holding that the respondent is residing temporarily with his father's sister (Bua) as her parents are not able to maintain her, against which, this criminal revision has been filed questioning that order.

2. Mr.Renu Kochar, learned counsel appearing for the applicant, would submit that the impugned order passed by the Family Court deserves to be set aside as under Section 126 (1) of the CrPC proceeding would lie where the respondent/wife is residing with her parents. She would further submit that the respondent could not have been filed the application under Section 125 of the CrPC before the Family Court, Rajnandgaon and the Family Court, Rajnandgaon has no jurisdiction to hear that application.
3. I have heard learned counsel appearing for the applicant, considered her rival submission and perused the order impugned.
4. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice sub-section (1) of Section 126 of the CrPC, which provides for venue of the maintenance proceeding. Section 126 (1) of the CrPC provides 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 he 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.”

5. A studied perusal of the above-stated provision would show that proceeding under Section 125 of the CrPC to be taken

against a person in any district where the husband resides or where he is, or his wife resides, or where husband last resided with his wife or as the case may be, with the mother of illegitimate child.

6. The word 'reside' has been defined in Straud's Judicial dictionary, fifth edition as under:-

"(1) -----

(2) What is the meaning of word "Resides". I take it that the word, where there is nothing to show that it is used in more extensive sense, denotes the place, where an individual eats, drinks and sleeps or his family or servants eat, drink & sleep (See Bayley J R Vs. Northcary 4B SC 959. Aman's Residence ix where he habitually sleeps."

7. In Websters dictionary also the word `reside' finds a similar meaning, which may be gainfully extracted:

"1. To dwell for a considerable time; to make one's home; live. 2. To exist as an attribute or quality with in. 3. To be vested: with in."

8. Way back, in the year 1963, the Supreme Court in the matter of **Mst. Jagir Kaur & another Vs. Jaswant Singh**¹ while dealing with Section 488(8) of the Cr.P.C., 1898 which is *pari-materia* provision to Section 126 of the Cr.P.C., 1973 held that word "Resides" means something more than the flying visit to or a casual stay in a particular place, and

¹ AIR 1963 SC 1521

there must be *animus manendi* (intention to stay in particular place) and pertinently held as under:-

"5. The only question in the appeal is whether the Magistrate of Ludhiana had jurisdiction to entertain the petition filed under s. 488 of the Code of Criminal Procedure. The question turns upon the interpretation of the relevant provisions of s. 488(8) of the Code, which demarcates the jurisdictional limits of a Court to entertain a petition under the said section. Section 488 (8) of the Code reads :

"Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child."

The crucial words of the sub-section 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 summary 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 first word is "resides". A wife can file a petition against her husband for maintenance in a Court in the District where he resides. The said word has been subject to conflicting judicial opinion. In the Oxford Dictionary it is defined as : "dwell permanently or for a considerable time; to have one's settled or usual abode ; to live in or at a particular place". The said meaning, therefore, takes in both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of

different meanings, including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it, one thing is obvious and it is that it does not include a causal stay in, or a flying visit to, a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. In this case the context and purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense. The purpose of the statute would be better served if the word "resides" was understood to include temporary residence. The juxtaposition of the words "is" and "last resided" in the sub-Section also throws light on the meaning of the word "resides". The word "is", as we shall explain later, confers jurisdiction on a Court on the basis of a causal visit and the expression "last resided", about which also we have something to say, indicates that the Legislature could not have intended to use the word "resides" in the technical sense of domicile. The word "resides" cannot be given a meaning different from the word "resided" in the expression "last resided" and, therefore, the wider meaning fits in the setting in which the word "resides" appears. A few of the decisions cited at the Bar may be useful in this context.

12. To summarize : Chapter XXXVI of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose. Section 488 prescribes alternative forums to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief. Proceedings under the section can be taken against the husband or the father, as the case may be, in a place where he resides, permanently or temporarily, or where he last resided in any district in India or where he happens to be at the time the proceedings are initiated."

9. In the matter of **Smt. Jeewanti Pandey Vs. Kishan Chandra**

Pandey² Their Lordships of the Supreme Court defined the word

² (1981) 4 SCC 517

“Resides” as under:-

“12.....The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, for example, for health or business or for a change. If a person lives with his wife and children in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides.”

10. Similar is the principle of law laid down in the matter of **Darshan Kumari (Smt) Vs. Surinder Kumar**³ in which Their Lordships of the Supreme Court have clearly held that the temporary residence of wife if not casual is sufficient to confer jurisdiction on the magistrate at that place or district concerned to try the maintenance petition. It was observed as under:-

“3.....we find that Section 126 of the Code requires that the proceedings under Section 125 may be taken against any person in any district where he or his wife resides. The section does not require permanent residence at the said place. Even a temporary residence, so long as it is not casual, is sufficient to confer jurisdiction on the Magistrate at that place or of the district concerned. In this view of the matter, we are of the view that the High Court's finding was incorrect. The appellant was entitled to prosecute the application in the Court of the learned Magistrate at Nuh where as per her averment in the application, she was residing and still resides. We, therefore, set aside the impugned decision of the High

³ 1995 Supp (4) SCC 137

Court.....”

11. Applying the principles of law laid down in the above-stated judgments to the facts of the case, it would appear that respondent/wife last resided with the petitioner at Jagdalpur and on 20.5.2015, the petitioner herein asked her parents to take back the respondent, come back to Rajnandgaon and started residing with her Buwa (father's sister). It is also pleaded that her father is seriously ill and undergoing treatment and she and her parents all are residing with her Buwa at Rajnandgaon and as such she is residing at Rajnandgaon for all practical purpose and falls within the clause 126(b) of the CrPC as interpreted by the Supreme Court in **Mst. Jagir Kaur** (supra), **Smt. Jeewanti Pandey** (supra) and **Darshan Kumari** (supra).
12. Thus, considering the provisions contained in Section 126 (1) (b) of the CrPC and principles of law laid down by the Supreme Court in the aforesaid judgments, if the facts of the present case are examined, it is quite vivid that the respondent is residing at Rajnandgaon with her Buwa and her parents are with her at Rajnandgaon as they have left Balod and continuously residing at Rajnandgaon and there is clear-cut averment in the application for maintenance, therefore assuming that the respondent herein is living with her Bua at Rajnandgaon, the Judge, Family Court, Rajnandgaon will have the jurisdiction to entertain and consider the application filed by the respondent/wife under

Section 125 of the CrPC, as such, learned Judge, Family Court, Rajnandgaon is absolutely justified in rejecting the preliminary objection relating to venue of the maintenance proceedings.

13. The upshot of the aforesaid discussion, the criminal revision deserves to be and is accordingly dismissed. However, the Judge, Family Court, Rajnandgaon is directed to conclude the maintenance proceedings expeditiously.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-