

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.1186 of 2019

Rahul Kumar Rajak, S/o Shri G.P. Rajak, aged about 34 years, Dy. Collector, Dongargaon, P.S. Dongargaon, District Rajnandgaon (C.G.)

---- Petitioner

Versus

Nikita Sonwani, W/o Rahul Kumar Rajak, aged about 27 years, R/o Village Ranbhata, Post Bunga, Tahsil Pussaura, District Raigarh (C.G.) Present R/o Sonwani Nivas, Ek Basti Panch Rasta, Ward No.16, Dongargarh, District Rajnandgaon (C.G.)

---- Respondents

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For Petitioner: Mr. Sunil Pillai, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/05/2019

1. The petitioner herein is husband, facing proceeding under Section 125 of the CrPC at the behest of his wife, the respondent herein, who filed an application under Section 125 of the CrPC before the Court of Additional Chief Judicial Magistrate, Dongargarh claiming maintenance in which the present petitioner appeared and filed objection that the respondent wife is resident of Dhamtari and therefore the application for maintenance under Section 125 of the CrPC is not maintainable which was rejected by the learned ACJM and upheld by the revisional Court against which this petition under Section 482 of the CrPC has been preferred by the petitioner husband.
2. Mr. Sunil Pillai, learned counsel for the petitioner husband, would submit that the Magistrate has no jurisdiction in view of the Family Court having been constituted for the entire district of Rajnandgaon under Section 3 of the Family Courts Act, 1984. He would further

submit that since the respondent wife is resident of Dhamtari as disclosed by him in the proceeding under Section 9 of the Hindu Marriage Act, therefore, the application is not maintainable.

3. I have heard learned counsel for the petitioner and perused the impugned orders and copies of other documents with utmost circumspection.
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 and another v. Jaswant Singh<sup>1</sup> 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 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 Court, 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 lie 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;

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1 AIR 1963 SC 1521

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 casual 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 casual 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 v. Kishan Chandra

Pandey<sup>2</sup> Their Lordships of the Supreme Court defined the word

"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

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2 (1981) 4 SCC 517

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) v. Surinder Kumar**<sup>3</sup> 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 Court. ...”

11. Reverting to the facts of the present case, it appears that both the courts have concurrently held that father and mother of the respondent wife retired from Dhamtari and they are residing in their parental place Dongargarh where the respondent herein is also residing with them and therefore the case is covered by Section 126(1)(b) of the CrPC. The finding so recorded by the two Courts below is neither perverse nor contrary to record, as there is sufficient material available on record that parents of the respondent after retirement are residing at Dongargarh and the respondent wife is residing with them. As such, I do not find any merit on this ground. However, Family Court has been constituted for Rajnandgaon and Khairagarh excluding the jurisdiction of Ambagarh Chowki,

<sup>3</sup> 1995 Supp (4) SCC 137

Dongargarh and Khairagarh by notification dated 1-8-2013. Therefore, this ground also holds no water. In consequence, the petition under Section 482 of the CrPC deserves to be and is accordingly dismissed, *in limine*.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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