

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 890 of 2018**

1. Keshar Bai W/o Lakhan Lodhi, aged about 68 years, Occupation - Nothing
2. Lakhan Lodhi S/o Hagaru Lodhi, aged about 70 years, Occupation Nothing, Both R/o Village- Dongariya, Thana Lohara, District Kabirdham (C.G.).
Both at present R/o Village Ghivari, Thana Bemetara, Tahsil Khamhariya, District Bemetara, (C.G.)

----Applicants**Versus**

Pawan S/o Lakhan Lodhi, aged about 45 years, Occupation Kashtkari, R/o Village Dongariya, Thana- Lohara, District Kabirdham (C.G.).

---- Respondent

For Applicants	:	Mr. Bharat Rajput, Advocate
For Respondent	:	Mr. Rajkumar Pali, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****22/04/2019**

1. With the consent of both the parties, the matter is heard finally.
2. In this case, the Applicants herein are mother and father of the Respondent. They had preferred an application under Section 125 of the Cr.P.C for grant of maintenance before the Family Court, Bemetara stating therein that they are presently residing at village Ghivari, District Bemetara. The Respondent had submitted his preliminary objection before the Family Court with the averments that the Applicants are still residing at village Dongariya, District Kabirdham, therefore, the Family Court at Bemetara has no jurisdiction to hear the matter. Vide impugned order dated 11/07/2018 passed in MJC No. 93/2018, the learned Family Court, Bemetara allowed the preliminary objection of the Respondent and

dismissed the application under Section 125 of the Cr.PC submitted by the Applicants on the ground of jurisdiction. Thus, this revision.

3. Counsel for the Applicants submits that the Applicants are permanent resident of Village- Dongariya, District Kabirdham, but at the time of submitting the application under Section 125 of the Cr.P.C, they were residing at village Ghivari, District Bemetara, therefore, the Family Court, Bemetara has absolute jurisdiction to hear the matter. Inspite of that, the learned Family Court has wrongly held that the Applicants are residents of village Dongariya, District Kabirdham, therefore, the jurisdiction lies to Family Court, Kabirdham. He further submits that as contained in Section 126 1 (b) of the Cr.P.C, the application under Section 125 of the Cr.P.C can be filed by wife/children/parents where they are residing, therefore, the finding of the Family Court with regard to jurisdiction is contrary to law.
4. Counsel for the Respondent supported the impugned order and submits that the Respondent has filed a civil suit before the Civil Judge, Class-I, Kawardha, wherein the residential address of the Applicants has been mentioned village- Dongariya, District Kabirdham and the summons were also served upon the Applicants on the same address. He further submits that in their reply and written statement also, the Applicants have admitted that they are resident of village- Dongariya, District Kabirdham. Thus, it is clear that the Applicant are resident of village Dongariya, District Kabirdham and they never resided at village Ghivari, District Bemetara, therefore, the Family Court has rightly rejected the application on the point of jurisdiction.
5. I have heard counsel for the parties and perused the records.

6. Section 126 of the Code of Criminal Procedure prescribed the procedure where the application under Section 125 of the Cr.P.C can be filed. The same is reproduced 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”*

(2) All evidence to 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 the pleader, and shall be recorded in the manner prescribed for summons-cases.

Provided that if the Magistrate is satisfied that the persons against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex-parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under Section 125 shall have power to make such order as to costs as may be just.”

7. A bare perusal of the above Section would reveal that the application under Section 125 of the Code of Criminal Procedure can be filed in any district

where at the time of filing of the application, the husband or son, as the case may be, or wife/parents resided.

8. The Applicants had filed the application with the averments that as the Respondent expelled them from his house, therefore, presently they are residing with their daughter at Village Ghivari, District Bemetara. Though in written statement relating to civil suit pending before the Civil Judge Class-I they admitted the fact that they are resident of village Dongariya, District Kabirdham, but they also categorically pleaded that presently they are residing at village Ghivari, District Bemetara. Therefore, prima-facie it is established that presently, the Applicants are residing at village Ghivari, District Bemetara, and thus the Family Court, Bemetara has absolute jurisdiction to decide the application. The finding of the Family Court is not in accordance with law.
9. Accordingly, the revision is allowed. The impugned order is set-aside.
10. It is directed that the Family Court, Bemetara shall decide the said matter afresh in accordance with law and as early as possible preferably within a period of 6 months.
11. Records of the Court below be sent back for further compliance and necessary action.

Sd/-
(Arvind Singh Chandel)
Judge