

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL. REV. P. 304/2020 & CRL. M.A. 13483/2020**

Date of Decision: 07.12.2020

IN THE MATTER OF:

SAURABH JAIN

..... Petitioner

Through: Mr. Rahul Gupta, Advocate.

Versus

SHILPA JAIN & ORS.

.... Respondents

Through: Mr. Sourabh Srivastava, Advocate.

(VIA VIDEO CONFERENCING)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI (ORAL)

1. The present petition has been filed under Section 397 Cr.P.C. on behalf of the petitioner (husband) assailing the order dated 10.09.2020 passed by the Family Court, Rohini. The only ground of challenge raised by the petitioner is that the Family Court, Rohini had no territorial jurisdiction to entertain the petition.

2. Mr. Rahul Gupta, learned counsel for the petitioner has relied on the reply filed by respondent no.1 before the Family Court to submit that the children born out of the wedlock i.e., respondent nos. 2 and 3 herein, are going to Manav Rachna International School, Charmwood Village, Faridabad and respondent no.1 along with the children is residing at *Plot No. A-2416, First Floor, Green Field Colony, Faridabad*. He also

submits that the petitioner resides in Sarita Vihar and accordingly, only Family Court, Saket Court will have the jurisdiction to try the case.

3. Mr. Sourabh Srivastava, learned counsel for the respondents submitted that respondent no.1 is a permanent resident of Pitampura where she resides along with her parents at *House No. 124, Rajdhani Enclave, Pitampura*. It is submitted that respondent no.1 is temporarily residing at the house in Faridabad on account of admission of respondent nos. 2 and 3 in the school mentioned hereinabove. He further relied on the bank statement issued by Karur Vysya Bank which has been filed along with the reply to submit that the account in the said bank was opened on the basis of permanent address of respondent no.1 i.e., the address in Pitampura. In fact, respondent no.1 has been filing her income tax returns wherein she has been mentioning her address at Pitampura as her residential address.

4. I have heard the learned counsels for the parties and have gone through the case records.

5. Section 126 of the Code of Criminal Procedure, 1973 reads as follows:

“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 in 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 his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully 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."

6. The primary contention raised revolves around the word 'reside', as used in clause (b) of Sub-section (1) of Section 126 Cr.P.C. The legislative history of the aforesaid section would show that the same was added in pursuance to the recommendations of Law Commission (41st report) wherein it was observed that often the deserted wives were compelled to live with their relatives far away from the place where the husband and the wife last resided together. They would be put to great harassment and expenditure, unless the venue of the proceeding is enlarged so as to include the place where they may be residing on the date of the application.

7. While holding that the proceedings under Section 488(8) Cr.P.C., 1982 were in the nature of civil proceedings and the remedy being summary, the person seeking remedy ordinarily is a helpless person and the words should be liberally construed, the Supreme Court in *MST Jagir Kaur & Anr. v. Jaswant Singh* reported as **AIR 1963 SC 1521**, observed that the proceedings can be instituted even at a place

where the husband temporarily or permanently resides. It was further held as follows:

“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.

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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."

8. The Madras High Court, in *K. Mohan v. Balakanta Lakshmi* reported as **1982 SCC OnLine Mad 192**, in a decision rendered by Ratnavel Pandian, J., as his Lordship then was, held that:

“18. Therefore, it is clear that the expression 'resides' occurring in Section 126(1)(b) has to be given a liberal construction and the legislature could not have intended to use the said term in the technical sense of 'domicile' and it has to be understood to include a temporary residence also.”

9. Subsequently in *Darshan Kumari v. Surinder Kumar* reported as **1995 Supp (4) SCC 137**, the Supreme Court held that the section does not require permanent residence at the said place. Even a temporary address, so long as it is not casual, is sufficient to confer jurisdiction on the Magistrate at that place or of the district concerned.

10. Again, in *Vijay Kumar Prasad v. State of Bihar and Ors.* reported as **(2004) 5 SCC 196**, the Supreme Court held that 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 at the date of application.

11. Coming back to the facts of the present case, it is seen that the address given by the respondent no.1/wife is not a temporary one but rather her permanent address, which is found mentioned in her bank records as well as income tax returns of the contemporaneous period.

12. In view of the above discussions, I find no illegality or perversity in the impugned order. Revision petition is dismissed. Miscellaneous application is disposed of as infructuous.

13. Copy of this judgment be communicated to the concerned Family Court electronically.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 07, 2020

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