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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 25th OF JULY, 2024

CRIMINAL REVISION NO.3592 OF 2024

MRS. BHUWANESHWARI LODH

Versus

OMPRAKASH LODH

Appearance:

*Shri Arjun Pathak, counsel with Shri Kartikey Aurangabadi,
counsel for the applicant.*

ORDER

This criminal revision has been filed under Section 397 read with Section 401 of Criminal Procedure Code, 1973 read with Section 19(4) of the Family Courts Act, 1984, being aggrieved by the judgment passed by Principal Judge, Family Court, Ratlam (MP) in CR No.02/2024 order dated 12.04.2024 whereby the learned Judge has dismissed the application of the applicant on the ground of jurisdiction.

(2) The brief facts of the case is that the applicant has initially

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filed an application under Section 125 of Criminal Procedure Code, before the Principal Judge, Family Court, Bhopal (MP) seeking maintenance for herself and minor child which was allowed on 29.06.2018 with allowance of Rs.7000/ and Rs.3000/ to the applicant and her child respectively. That, the applicant has tried her best to survive with this petty amount of maintenance allowed to her but after facing a lot of hardship, she finally made herself to increase the maintenance and has filed an application under Section 127 of Criminal Procedure Code, 1973 (*for short 'Cr.PC'*) before the Principal Judge, Family Court, Ratlam (MP).

(3) Counsel for the applicant has stated that the application for alteration of maintenance was then dismissed by the learned Principal Judge, Family Court, Ratlam on 12.04.2024 on the

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ground of jurisdiction by saying that this court cannot alter the order of maintenance as the same can be done by Principal Judge, Family Court, Bhopal, who has passed the order.

(4) Being aggrieved by the impugned order, the applicant has filed the revision before this Court for redressal of grievance on the ground that the applicant was residing currently in Ratlam and this fact was ignored by the Family Court, Ratlam (MP) before passing the impugned order. The application was dismissed on the ground of jurisdiction and has stated that the order was passed by the Principal Judge, Family Court, Bhopal and it can only be altered by the same court and the Principal Judge, Family Court, Ratlam cannot alter the maintenance as per law.

(5) After hearing counsel for the applicant, it is relevant to

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produce Section 125 Cr.PC which provides for maintenance of wives, children and parents and Section 126 Cr.PC provides for proceedings under Section 125 Cr.PC which 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.

Section 127 Cr.PC provides for alteration in the allowance.

(6) Counsel for the applicant has submitted that Principal Judge, Family Court, Ratlam has rejected the application only on the

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ground that Family Court, Ratlam has no jurisdiction to decide the same because since the order of maintenance under Section 125 Cr.PC has been passed by the Family Court, Bhopal. He has relied upon the citation of *Kerala High Court in the case of George vs. Ealiyamma George reported in 2008 SCC Online Kerala 51* in which it has been held that an application u/s.127 of the Code need not necessarily be filed before the same court which passed the original order u/s. 125 of the Code. An application u/s. 127 of the Code can be filed before any court of competent jurisdiction as provided u/s. 126 of the Code depending on the territorial jurisdiction which governs the parties. Even assuming that an application u/s. 127 of the Code is a continuation of the original lis initiated u/s.125 and that there can be no doubt that for all

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procedural and legal purposes the subsequent proceeding has to be and can always be dealt with by a competent court of jurisdiction in consonance with the provisions contained in Section 126 of the Code. In Criminal Revision No.291/2015 (Manoj Bhalerao Patil vs. Priya Manojbhai Patil) passed by Gujarat High Court in which it has been held that application under Section 127 Cr.PC can be preferred in the Court other than who want to decide the application under Section 125 of Code. In Kailashben Arvindkumar Joshi vs. Arvindbhai Ratilal Joshi and Another reported in (1985) 2GLR761 in which it has been held that as discussed above, Section 127 does not provide for any other separate procedure for deciding the application. The procedure provided in Section 126 is the only procedure applicable to the

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proceedings under [Section 127](#) of the Code. Further there is no specific bar that the application for enhancement or alteration of maintenance award cannot be filed before the Court where the wife resides. In any set of circumstances by giving interpretation to the provisions of [Section 127](#) by holding that for modification or alteration the wife is entitled to file application where she resides as provided under [Section 126](#) of the Code, no violence is caused to the statutory provisions and as this Chapter IX is for the welfare of deserted and neglected wife, children or parents there is no reason to give narrow interpretation to the said provisions as contended. In the result the Revision Application is allowed. Rule is made absolute. It is directed that the learned Magistrate would decide the application filed by the petitioner as far as possible

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within three months from the date of the receipt of the writ of this Court.

(7) So in light of the *judgments cited above (supra)* and in the considered opinion of this court, the Family Court, Ratlam (MP) has committed error in rejecting the application filed by the applicant on the ground of lack of jurisdiction. Hence, the impugned order dated 12.04.2024 is set-aside and the case is remanded back to the Family Court, Ratlam to decide it afresh, as expeditiously as possible, in accordance with law.

(7) With the aforesaid, this criminal revision stands allowed and disposed of. Certified copy as per Rules.

**(HIRDESH)
J U D G E**

Arun/-