

Writ Petition No.18090/2015

12.7.2016.

Shri Ved Prakash Nema, learned counsel for petitioner.

Shri Anil Khare, learned Senior Counsel with Shri Abhinav Shrivastava, learned counsel for respondent.

Heard.

1. Challenge in this petition under Article 227 of the Constitution of India is to an order-dated 2.9.2015 passed in a proceeding under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Code'), whereby Principal Judge, Family Court, Sagar has rejected the preliminary objection raised on behalf of petitioner as to maintainability of the proceedings at Sagar.

2. Earlier, petitioner had approached this Court vide Writ Petition No.6565/2015 being aggrieved of order-dated 20.3.2015, whereby objection preferred by the petitioner with regard to maintainability of proceedings before the Family Court at Sagar was dismissed. A coordinate Bench of this Court while taking into consideration that the objection raised by the petitioner was dismissed in a perfunctory manner by the Family Court, proceeded to set aside the order and remitted the matter for reconsideration of said objection by order-dated 24.7.2015.

3. On reconsideration, Family Court, Sagar passed the impugned order holding that the proceedings brought in the Family Court at Sagar is well within its jurisdiction on a finding

Writ Petition No.18090/2015

that the respondent-wife was residing at Sagar when the application under Section 125 of the Code was filed. Reasons which find mention are in the following terms –

“प्रकरण में यह स्वीकृत है कि आवेदिका निशा अनावेदक प्रशांत की पत्नि है तथा दोनों का विवाह सागर में हुआ है यह तो स्पष्ट है कि आवेदिका मूलतः सागर की रहने वाली है । अनावेदक द्वारा आवेदिका के आवेदन प्रस्तुत करने के समय बँगलोर में रहने के कुछ दस्तावेज प्रस्तुत किये गये है । जिनके खण्डन में आवेदिका ने अपने जबाव में यह कहा है कि उसकी पुत्री का एडमीशन बँगलोर के स्कूल में जरूर हुआ है, लेकिन वह नियमित छात्रा नहीं है । अग्रिम जमानत के आवेदन में बँगलोर क पते के संबंध में आवेदिका ने कहा है कि उस समय वह बँगलोर में निवास करती थी । प्रकरण की इस स्टेज पर मात्र दस्तावेजों के आधार पर निवास के संबंध में कोई निश्चयक निष्कर्ष नहीं निकाला जा सकता है । संबंध खराब होने पर मायके में आकर रहने को अस्वाभाविक नहीं कहा जा सकता है । अतः अभिलेख को देखते हुए यह नहीं कहा जा सकता है कि आवेदिका आवेदन दिनांक को सागर में निवास नहीं करती थी । अतः क्षेत्राधिकार के संबंध में अनावेदक की आपत्ति को निरस्त किया जाता है तथा प्रकरण को न्यायालय के क्षेत्राधिकार में होना पाया जाता है । ”

4. Section 125 of the Code envisages –

125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority,

Writ Petition No.18090/2015

where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

...."

5. Section 126(1) of the Code which is relevant for the purpose of this case, stipulates :

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

Writ Petition No.18090/2015

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child."

6. The word 'reside' came to be considered in **Mst. Jagir Kaur vs Jaswant Singh AIR 1963 SC 1521** in the context of the jurisdiction of the Magistrate under Section 488 of the Code of Criminal Procedure, 1898 for entertaining the petition of a wife for maintenance, wherein their Lordships were pleased to hold -

"6. 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"

7. In **Vijay Kumar Prasad vs State of Bihar (2004) 5 SCC 196**, it was held that the proceedings under Section 125 are civil in nature. It was noted as follows -

"14. 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 on the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature. Unlike clauses (b) and (c) of Section 126(1) an application by the father or the

Writ Petition No.18090/2015

mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives."

8. In the case at hand, the facts as borne out from record establish that when the application under Section 125 of the Code was preferred by respondent-wife, she was residing at Sagar. The findings when tested on the anvil of cogent material facts on record, cannot be faulted with as would warrant any indulgence.

9. Consequently, petition fails and is **dismissed**. No costs.

**(SANJAY YADAV)
JUDGE**

vinod