

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 28th OF OCTOBER, 2025

CRIMINAL REVISION NO.3413/2021

PRADEEP MODI

VS.

MANJULATA JAIN & ANOTHER

Petitioner by Shri Amit Khatri, Advocate.

Respondents by Shri Ankit Saxena, Advocate.

.....
ORDER

Heard finally.

2. This revision petition has been filed under Section 397 read with 401 of the Code of Criminal Procedure, 1973 (for brevity "Cr.P.C.") by the petitioner assailing the order dated 24.09.2021 passed by learned Principal Judge, Family Court, Bhopal in M.Cr.C. No.797/2014 thereby allowed the respondents' application filed under Section 151 of Code of Civil Procedure, 1908 (for brevity "CPC").

3. Factual matrix of the case, leading to the present revision petition is that the Family Court, Bhopal vide order dated 01.11.2014 had directed the petitioner to pay Rs.10,000/- per month to respondent No.1 and Rs.7,000/- per month to respondent No.2 as maintenance amount under the provisions of Section 125 of CrPC.

3.1 Respondent No.1 filed an application for execution of the order dated 01.11.2014, wherein, the learned Family Court issued warrant of arrest against the petitioner and the petitioner was produced before the learned Family Court on 07.01.2018. Respondent No.1 filed an application before the learned Family Court on 08.01.2018 stating that she has received the maintenance amount and she has requested to release the petitioner. Considering the application filed by the respondent No.1, the Family Court has released the petitioner.

3.2 On 08.05.2018, respondent No.1 filed an application under Section 151 of CPC stating that the petitioner had paid only Rs.50,000/- out of outstanding arrears of maintenance amount on 07.01.2018. The learned Family Court vide order dated 08.05.2018 directed the petitioner to deposit Rs.2,55,000/- as arrears of maintenance. The petitioner had challenged the said order by filing a Criminal Revision No.2868/2018 before this Court and the Coordinate Bench vide order dated 23.07.2019 set aside the order dated 08.05.2018 and directed the Family Court to decide the application Section 151 CPC after providing opportunity to both the parties to lead evidence and also directed the petitioner to pay monthly maintenance regularly to the respondents as fixed by the Family Court vide order dated 01.11.2014.

3.3 Learned Family Court in compliance of the order dated 23.07.2019 of this Court, again enquired the matter and decided the application under Section 151 of CPC vide order dated 24.09.2021 and concluded that the petitioner had not paid full arrears of maintenance amount on 07.01.2018, but paid only Rs.50,000/- to the respondents and also found that the petitioner has paid the balance amount of Rs.2.55 Lakh by way of a cheque subsequently. Respondent No.1 was also

directed to submit details about payment of maintenance amount. Hence, this revision.

4. Learned counsel for the petitioner sanguinely submits that the application under Section 151 of CPC is not maintainable in a proceedings under Section 125 of Cr.P.C. being a criminal matter. He further submits that since respondent No.1 had filed an application before the court stating that she had received the maintenance amount and same shall be considered as the acknowledgment of payment of maintenance amount, therefore, the learned Family Court has failed to appreciate the evidence on record. Thus, as per the learned counsel, the impugned order is liable to be set aside.

5. Combating the submissions, learned counsel for the respondents submits that sheer wrong mentioning of the provision of law would not make the application not maintainable. He further submits that the learned Family Court has inquired the matter in compliance of the order dated 23.07.2019 passed by the High Court. Since it is a matter of recovery of maintenance amount, therefore, the petitioner is liable to pay the maintenance amount as per the order of the learned Family Court and thus present revision deserves dismissal.

6. Heard the learned counsel for the parties and perused the record of the Family Court.

7. The sheet anchor of the controversy pertains to the applicability of the provisions of CPC in a proceeding under Section 125 of Cr.P.C. The normal practice is that the parties to such proceedings are required to take various steps which are usually being taken in a civil proceeding under the law of civil procedure such as service of summons, amendments in pleadings, impleadment of parties, restoration of proceeding, setting aside proceeding, compromise and so on.

Therefore, the question as whether the provisions of C.P.C. have any application to the proceedings under Section 125 Cr.P.C. needs to be answered.

8. Section 125 Cr.P.C. occurs in Chapter IX under the caption; “Order for Maintenance of Wives, Children and Parents” is a measure of social justice and special enactment to protect distressed women, children and parents. The proceedings under Chapter IX of the Cr.P.C. are essentially judicial proceedings of a Criminal Court. However, the proceedings under this Chapter are not punitive. The object is not to punish a person for neglect to maintain those whom he is bound to maintain. The intent of Legislature is to provide only a speedy remedy against starvation for a deserted wife or children or parents by a summary procedure to enforce liability in order to avoid vagrancy. Section 125 Cr.P.C. gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. The Supreme Court, in **Captain Ramesh Chander Kaushal, v. Veena Kaushal, AIR 1978 SC 1807**, has underlined the very object of Section 125 Cr.P.C. and opined that this provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15 (3) reinforced by Art. 39 of the Constitution of India. The Apex Court in its landmark decision of **Savitri v. Govind Singh Rawat, AIR 1986 SC 984** held that while passing an order under Chapter IX of the Cr.P.C. asking a person to pay maintenance to his wife, child or parent, as the case may be, the Magistrate is not imposing any punishment on such person for a crime committed by him. Chapter IX of the Cr.P.C. contains a summary remedy for securing some reasonable sum by way of maintenance.

9. So far as nature of the proceedings under Section 125 of Cr.P.C. is concerned, in case of **S.A.L. Narayan Row v. Ishwarlal**

Bhagwandas, AIR 1965 SC 1818, the Supreme Court has opined that a remedy of civil nature is one by which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State. Whereas, remedy of criminal nature is one under which a person can be punished for an offence committed. A criminal proceeding, if carried to its conclusion, may result in the imposition of sentences. The character of the proceedings depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. The Supreme Court, in **Shail Kumari Devi v. Krishan Bhagwan Pathak, AIR 2008 SC 3006**, has opined thus;

“Now, having regard to the nature of proceedings, the primary object to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime or to tempt others to commit crime in regard to them. It was held that the Magistrate had 'implied power' to make such order. The jurisdiction of the Magistrate under Chapter IX is not strictly criminal in nature.”

10. In Rina Kumari @ Rina Devi @ Reena v. Dinesh Kumar Mahto & Ors., 2025 INSC 55, it has been held as under:-

“30..... maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in *Mst. Jagir Kaur and another vs. Jaswant Singh*, a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 Cr.P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil

Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.”

11. Section 7 of the Family Courts Act, 1984 contemplates twofold jurisdiction of the Family Court. Cases, except the proceedings under Chapter IX of Cr.P.C., are decided by the Family Court as a District Court; whereas, while dealing with the proceedings under Chapter IX of Cr.P.C. the Family Court exercises the jurisdiction of a Judicial Magistrate First Class. Section 10 of the Family Courts Act, 1984 reads as under;

“10. Procedure generally;- (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.”

12. This Court, in the matter of **Rajesh Shukla v. Meena R. Shukla, 2005 CrLJ 3800**, had an occasion to deal with the question as whether the revision arising out of an order passed by the Family Court on application under Section 125 Cr.P.C. should be registered as Criminal Revision as they flow from the proceedings under the Cr.P.C., the Full Bench is of the view that since powers of Judicial Magistrate First Class

have been exercised by the Family Court for deciding application under Section 125 Cr.P.C., therefore, the revision filed against such order should be registered as Criminal Revision.

13. In **Pandharinath Sakharam Thube v. Kum. Surekha Pandharinath Thube, 1999 CrLJ 2919** the Bombay High Court is of the view that the proceedings under Section 125 Cr.P.C. are wholly governed by the procedure of the Code of Criminal Procedure, they are really of civil nature, but are dealt with summarily in a Criminal Court for the purpose of speedy disposal on grounds of convenience and social order. In **Jamna Bai v. Shivnarayan, 1999 (I) MPWN 126**, this Court has held that the proceedings under Section 125 Cr.P.C. are in the nature of quasi-criminal and quasi-civil and as such strict principles of civil or criminal law cannot be applied to these cases.

14. In **Rajesh Shukla's** case (supra) the Full Bench of this Court has held that the Chapter IX of the Code provides for its own procedure. Section 125 of the Code pertains to orders for maintenance of wives, children and parents. Section 126 of the Code provides the procedure of dealing with said application. Code does not provide for review or change in the order once finally passed under Section 362 of the Code. However, unlike Section 362 of the Code, powers to alter or modify the quantum of maintenance is conferred upon the Court under Section 127 of the Code. Under Section 126 of the Code, power is conferred for setting aside ex parte order. Section 128 of the Code relates to enforcement of order of maintenance by the Magistrate. Thus, Chapter IX of the Code itself provides its own procedure for grant of maintenance.

15. Though the provisions of Section 125 Cr.P.C. appear in a criminal inquiry, the proceedings are of a civil nature. They do not amount to a civil suit. Thus, the proceedings under this Section are quasi civil in nature. It was observed in **Ram Chand Saudagar Ram v. Jiwan Bai**,

1958 CrLJ 1437 : AIR (P&H) 431, that it does not mean that the Magistrate dealing with such cases gets all the powers of a Civil Court of that all the rules governing the civil proceedings can be imported.

16. A Court of Judicial Magistrate First Class, or a Family Court while dealing with the proceedings under section 125 of Cr.P.C., does not have inherent powers under Cr.P.C like Section 151 of C.P.C. Section 482 of Cr.P.C. is available only to the High Court. But, it is a settled principle of law that every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim

” that means where anything is conceded, there is conceded also anything without which the thing itself cannot exist. Where the statute confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are necessary to its execution (see-

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17. Whenever anything is required to be done by law and it is found impossible to do that thing unless something is not authorized in express terms be also done then that something else will be supplied by necessary intendment. Such a construction, though it may not always be admissible but, to advance the object of the legislation under the scheme of Chapter IX of the Cr.P.C. would be admissible. In the absence of any express prohibition, it would be appropriate to construe the provisions of Chapter IX as conferring an implied power on the Court of JMFC or, the Family Court dealing with the proceeding under Section 125 of Cr.P.C. This legal preposition is well reflected from the exposition by the Apex Court in **Savitri v. Govind Singh Rawat** (supra).

18. Though, the proceedings of Chapter IX of the Cr.P.C. (now Chapter X, Section 144 to 147 of the Bharatiya Nagarik Suraksha Sanhita,

2023) are of civil nature, but are dealt with summarily in a Criminal Court for the purpose of speedy disposal, therefore, such proceedings are wholly governed by the procedure prescribed in the Cr.P.C. and the provisions of C.P.C. are not applicable to such proceedings. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Therefore, it stands to reason that the Court, while dealing with the proceedings under Section 125 Cr. P.C., in exercise of ancillary and incidental powers can take all necessary steps which are necessary for execution of the legislative intent.

19. It is clear from the above discussion that, in order to decide quickly and summarily a proceeding under Section 125 Cr.P.C. the Courts are competent to take inevitable steps to promote the ends of justice, however, not under the provisions of C.P.C. but under its ancillary or incidental powers possessed by necessary intendment. There is enough room for the apprehension that if the tangled provisions of C.P.C. are held applicable to such proceedings, all the subtleties of such provisions would also require to be observed while applying them which can affect adversely the very purpose of speedy remedy on the grounds of convenience and social order enshrined in Chapter IX of the Cr.P.C.

20. The technical argument regarding the non-maintainability of a Section 151 CPC application in a criminal case is sound. However, in the case at hand, the application filed by respondent No.1 was intended to ensure the recovery of maintenance amount, therefore, mere mentioning of provision as Section 151 of CPC does not make the application 'not maintainable'. The substantive issues of acknowledgment of payment of maintenance amount and appreciation of evidence are matters that a revisional court would consider on their

merits to ensure justice is done, potentially using powers possessed by necessary intendment under the CrPC to rectify any error in the order passed by the Family Court.

21. The petitioner was directed to pay maintenance amount vide order dated 01.11.2014 by the learned Family Court, therefore, he is under obligation to comply with the order of maintenance. The learned Family Court in compliance of the order dated 23.07.2019 passed by this Court, after due enquiry, determined the arrears of maintenance amount. The learned Family Court has recorded its conclusion on the basis of evidence adduced by both the parties during enquiry upon the application dated 08.05.2018 filed by respondent No.1 and then issued direction accordingly to ensure the recovery of maintenance amount with full satisfaction.

22. In view of the above discourse, the impugned order does not call for any interference in exercise of revisional power of this Court as to correctness, legality and propriety of the impugned order.

23. Resultantly, the revision being misconceived, is hereby **dismissed.**

(RAMKUMAR CHOUBEY)
JUDGE