

CASE LAWS ON MAINTENANCE AND ITS RECOVERY UNDER CR.P.C.

Criminal Procedure Code, 1973, Section 125 – Maintenance – No evidence of ill-treatment by husband – Negligence by husband to maintain her wife also not established – Wife living with her parents of her own accord – She is, therefore, not entitled for maintenance allowance for herself – However, she is entitled to maintenance allowance for her two kids who are living with her. **(Bheekha Ram V. Gorna Devi and others, 1999 DHLR 543).**

Evidence Act, 1872, Sec. 114 – Presumption of valid marriage – 'A' and 'B' living as husband and wife for continuous period exceeding 25 years – Previous husband of 'A' not complained about 'A' living with 'B' – Held, presumption of valid marriage between 'A' and 'B' justifiable **(Smt. Dharamabai wife of Shripat Mun V. Shripat son of Mahadeo Mun, 3 M.C. 138 (Bombay High Court).**

(i) Criminal Procedure Code, 1973 – Section 125(1)(d) – Expression “mother” – Whether includes “step mother” ? No.

(ii) Criminal Procedure Code, 1973 – Section 125(1)(d) – Maintenance claim by step-mother against step-son – To achieve special objective under law, a childless step-mother may claim maintenance from her step-son provided she is widow or her husband, if living, is also incapable of supporting and maintaining her – Maintenance order in favour of step-mother against appellant, step-son – Husband of claimant possessed of sufficient means and property – Natural born sons were also well to do – Prima facie claimant proceeded against step-son with a view to punish and harass him – She is not entitled to any maintenance. **(Kirtikant D. Vadodaria V. State of Gujarat & Anr. 1996(2) Crimes 119 (SC).**

Criminal Procedure Code (2 of 1974), S.125 and Mahomedan Law – Divorce – Maintenance proceeding instituted by a Muslim wife – Muslim husband in his written statement taking plea that his marriage has been dissolved at an earlier date in talak form – Even where fact of dissolution at an early date is not proved filing of written statement containing plea of divorce amounts to dissolution of marriage from the date on which such statement made. **(Jaitunbi Mubarak Shaikh V. Mubarak Fakruddin Shaikh and another, 1999(3) Mh.L.J. 694).**

Criminal P.C. (2 of 1974), Ss.126, 125, 401 – Application for maintenance by wife – Applicant remaining absent on relevant date – Application cannot be dismissed for default in absence of specific provisions in that respect under Ss.125 to 127 – Trial Court dismissing application by incorporating analogous provisions of Civil P.C. – Illegal – Order is liable to be set aside in revision. **(Abdul Wahed V. Hafeeza Begum and others, 1987 Cri.L.J. 726).**

Criminal Procedure Code, 1973 – Section 125, 126(3) and 482 – Maintenance : Dismissal of petition for default : Magistrate has no power to dismiss petition under Section 125, Cr.P.c. For default : For any reason, if it is dismissed, said Court will become functus officio : It has no power to set aside default order, earlier order illegal notwithstanding : Affected party has to take recourse to revisional jurisdiction as contemplated under Cr.P.C. **(C.Subramanyam V. C. Sumathi & Anr. I (2004) DMC 456 (DB).**

(a) Criminal Procedure Code (2 of 1974), S. 125 – Wife must prove neglect and refusal on part of the husband – Ill-treatment cannot be substantiated on basis of general allegations by wife in absence of any details thereof.

(b) Criminal Procedure Code (2 of 1974), S. 125 – Application for maintenance by wife – Wife in spite of decree for conjugal rights without justifiable reason did not joint non-applicant husband – Applicant wife cannot claim maintenance. **(Sayyed Jabbar Ali V. Mst. Saheba Fatima w/o. Sayyed Jabbar, 2002(1) Mh.L.J. 623).**

Code of Criminal Procedure, 1973, Sec.125 – Proceedings under -Swift and summary remedy – Court not required to go into intricacies of law.

Code of Criminal Procedure, 1973, Sec.125 – Wife's application for maintenance – Husband denying marriage – Proof of marriage – requirements of.

Code of Criminal Procedure, 1973, Sec.125 – Wife's application for maintenance – Husband denying marriage – Evidence that parties live as and wife in same house few years and a son was born to them – Strong presumption as to validity of marriage. (**Bikrama @ Bika Parida V. Adat Dei, 3 M.C. 377 (Orissa High Court)**).

Code of Criminal Procedure, 1973, Chapter IX. Sec.125(3) – Proceedings under chapter are of a civil nature even though they are in criminal trial – Court does not make failure to maintain wife and children a punishable offence – Person proceeded against in such proceeding is not an accused. (**Chandrikaben Navnitlal Dave V. The State of Gujarat and another, 3 M.C. 381 (Gujarat High Court)**).

Code of Criminal Procedure, 1973, Sec.125 – Proceedings under – Such proceedings are in nature of summary – Husband challenging validity of marriage – Remedy is not husband to go to competent Civil Court and get his marriage annulled – Held, maintenance application of wife could not be rejected. (**Malan w/o. Balasaheb Gawade V. Balasaheb Bhimrao Gawade and another, 3 M.C. 652 (Bombay High Court)**).

Code of Criminal Procedure, 1973, Sec.125 (2) – Order of maintenance – No mandate of law that such order should be made effective from date of order or that it is only in exceptional circumstances that it should be made effective from date of application – Further no statutory mandate about recording of special reasons for awarding maintenance from date of application. (**Sou. Sharda V. Gunwantrao Kade, 3 M.C. 655 (Bombay High Court)**).

Code of Criminal Procedure (2 of 1974), S. 125 – Maintenance proceedings – Performance of marriage – Proof – Strict proof is not required – It is sufficient if claimant prima facie satisfies the Court that claimant and her husband lived as husband and wife – Performance of essential ceremonies need not also be proved. (**Dwarika Prasad Satpathy V. Bidyt Prava Dixit and another, AIR 1999 Supreme Court 3348**).

Code of Criminal Procedure, 1973, Sec.125 – Quantum of maintenance – No proof of income of husband from landed property – Held, merely proving that a person has got the right to receive the income does not mean, he is the recipient of the same. (**Ashok Yeshwant Mate Vs. Sou. Amita Ashok Mate and others, 1983(2) Bom.C.R. 301**).

Code of Criminal Procedure (2 of 1974) S.125(3)(c) – Claim for maintenance by wife – Wife after taking divorce agreeing to stay separately and giving up her claim of maintenance – She was not entitled to claim maintenance. (**Gajanan s/o. Pandurang Solanke V. Sheela Gajanan Solanke and others, 2005(1) Mh.L.J.348**).

(A) Criminal P.C. (2 of 1974), S.127 – Maintenance – Enhancement – Application has to be filed before Magistrate who has passed first order of maintenance – Order by Court of Session enhancing amount of maintenance – Illegal.

(B) Criminal P.C. (2 of 1974), S. 127 – Maintenance – Alteration of allowance – Can be made from date of order and not from date of application. (**Raj Kumar V. Mst. Shanta Bai, 2002 Cri.L.J.2894**).
