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MAINTENANCE FOR WIVES UNDER SECTION 125 **CRPC: JUDICIAL PERSPECTIVES ON ENTITLEMENT,** **PROCEDURAL NUANCES AND SOCIAL JUSTICE**

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Abstract:

Section 125 CrPC has constituted a provision for providing monetary relief to wives to avert destitution and further social justice in matrimonial disputes. The paper discusses the aspect of providing for maintenance to wives under Section 125 of the Code of Criminal Procedure in India with judicial considerations that go into forming this interpretation and enforcing it. This research critically explores how the courts interpret entitlement to maintenance and its implications over issues such as the scope of 'wife', eligibility as defined by marital status, circumstances of estrangement, procedure complexity on burden of proof, standard of evidence, timelines which affect the effectiveness of maintenance orders. The paper discusses the effort the judiciary has made to balance individual rights with broader societal objectives to scrutinize a comprehensive approach to view maintenance provisions both as a legal entitlement and as a social safeguard. This paper address various issues that arise before the courts when dealing with the provisions of maintenance of wives under Section 125 of the Cr.P.C., with the support of reported decisions.

Introduction:

Section 125 of the Criminal Procedure Code (CrPC) is indeed a re-incarnation of Section 488 of the old CrPC of 1898, with the notable addition of parents to the list of those entitled to maintenance. This provision 125 CrPC is a measure of Social justice specially enacted to protect and inhibit neglect of women, children, old-aged parents and infirm dependents.

This article considered on maintenance under Section 125 of the Cr.P.C., the analogy of Vamana asking for three steps of land in Hindu mythology came to my mind. Similar to

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Vamana's request to Bali for three steps of land, which, upon being granted, led to Vamana expanding to cover the entire universe, maintenance proceedings also find their place in Sections 125, 126, and 127 of the CrPC. However, these proceedings have extended into various dimensions of litigation in nearly all courts dealing with family and matrimonial matters. The concept of maintenance, though seemingly modest, involves several complications when dealt with in practice.

Objectives:

The main object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.³¹ It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support.

Issues that crop up while dealing with maintenance of spouse under Section 125

(I) Earning wife and her claim of maintenance:

Merely because wife is earning some income that does not dis entitle her from claiming maintenance. Where the personal income of the wife is insufficient, she can claim maintenance under section 125 of Cr.P.C.⁴ The Phrase "unable to maintain herself" under section 125 CrPC – Means unable to maintain herself in way she was living with her husband.⁵ Merely because wife is capable of earning, it is not sufficient reason to reduce maintenance granted to her by Family Court. 'Capable of earning' and 'actually earning' are two different requirements and therefore they both cannot be equated.⁶ Merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.⁷

A husband simply presenting evidence that his wife earns some income does not absolve him of his obligation to provide maintenance. This alone is not sufficient to negate the application of Section 125 of the CrPC. It must be proven that the wife's earnings are adequate to support her needs. The question of whether the deserted wife is unable to maintain herself must be

³ Vimala v. Veeraswami(1991) 2 SCC 375

⁴ Chaturbhuj Vs Sita Bai AIR 2008 SC 530.

⁵ Chaturbhuj v. Sita Bai AIR 2008 SUPREME COURT 530

⁶ Shailaja Vs Khobbanna AIR 2017 SC 1174.

⁷ Sunita Kachwaha and others Vs Anil Kachwaha AIR 2015 SC 554 : (2014) 16 SCC 715

determined based on the evidence submitted. If the wife's personal income is inadequate, she remains entitled to claim maintenance under Section 125.

The key consideration is whether the wife can sustain herself at the standard of living she was accustomed to while residing with her husband. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record and varies from case to case and there cannot be any universal application or straight jacket formula.

(II) Place of suing (Place of making application):

A Family Court established under the Family Act shall exclusively have jurisdiction to adjudicate upon the applications filed under section 125 of Cr.P.C.⁸ Family Courts shall have the jurisdiction only with respect to city or town whose population exceeds one million, where there is no Family Court, proceedings under Section 125 CrPC shall have to be before the Magistrate of the First Class.⁹

By virtue of section 126(b), the wife is entitled to file the petition claiming maintenance at the place where she resides and therefore by applying the same analogy, a minor child can file petition under section 125 Cr.P.C seeking maintenance at the place where such child resides.¹⁰ The benefit given to the wife and children to initiate proceeding at the place where they reside is not given to the parents. An application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.¹¹

(III) Presumption as to marriage:

A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is a rebuttable one, heavy burden lies on the person, who seeks to deprive the relationship.¹² Second marriage entered by the husband by concealing the fact of first marriage, cannot take benefit of his own wrong and the second wife can claim maintenance under section 125 Cr.P.C.¹³

⁸ Shabana Bano Vs Imran Khan AIR 2010 SC 305.

⁹ Abhilasha v. Parkash (2021) 13 SCC 99

¹⁰ Dr B. Vishnu Janardhan Vs B. Supraja (minor represented by her mother Smt Vijayasree and another) 1996 SCC online AP 1304

¹¹ Vijaya Kumar Prasad Vs State of Bihar and others AIR 2004 SC 2123.

¹² Badri Prasad Vs Deputy Director of Consolidation 1978 (3) SCC 527: AIR 1978 SC 1557

¹³ Badshah Vs Sou Urmila Badshah Godse and Another 2014 (1) SCC 188: AIR 2014 SC 869.

Where a man and woman are proved to have lived together as man and wife, the law presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.¹⁴ Law presumes infavour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.¹⁵

Where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock.¹⁶ When an attempt is made by the husband to negative the claim of the neglected wife depicting her as kept mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage.¹⁷ The standard of proof of marriage in a proceeding under section 125 Cr.P.C is not as strict as is required in a trial for an offence under section 494 of IPC.¹⁸ Maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached.¹⁹

In a proceeding under section 125 Cr.P.C the rigours of strict proof of all the formalities of Hindu Marriage can be dispensed with because whether the marriage is truly valid, invalid or void may be appropriately decided by the Civil Court. A proceeding under section 125 of Cr.P.C is a piece of welfare or socialistic legislation to protect a neglected wife from destitution and vagrancy and it is also a summary proceeding for speedy disposal.²⁰ Couple living together and having children is sufficient to conclude marriage and the strict standards of proof of marriage is not necessary.²¹ Validity of marriage cannot be a ground for refusal of maintenance if other requirements of section 125 Cr.P.C are fulfilled. Section 125 Cr.P.C proceeds on the basis of a de-facto marriage and not on de-jure marriage. The nature of proof of marriage required for a proceeding under section 125 Cr.P.C need not be so strong or conclusive as in a criminal case under section 494 of IPC.²²

The Marriage between a Christian and a Hindu performed as per Hindu rites with the consent of both parties to marriage cannot be said to be invalid for the purpose of claiming maintenance

¹⁴ A.Dinohamy Vs W. L.Balahamy AIR 1927 PC 185.

¹⁵ Mohabbat Ali Khan Vs Muhammad Ibrahim Khan and others AIR 1929 PC 135

¹⁶ Talsa and others Vs Durghatiya and others 2008(4) SCC 520 : AIR 2008 SC 1193

¹⁷ Vimala Vs Veeraswami 1991 (2) SSC 295

¹⁸ Dwarika Prasad Satpathy Vs Bidyut Prava Dixit and another 1999(7) SCC 675: AIR 1999 SC 3348.

¹⁹ Dwarika Prasad Satpathy Vs Bidyut Prava Dixit and another 1999(7) SCC 675: AIR 1999 SC 3348.

²⁰ Jitendranath Das Vs Minati Das 2004 SCC online Calcutta 112.

²¹ Kamala Vs M.R. Mohan Kumar AIR 2019 SC (Criminal) 61.

²² Pyla Mutylamma @ Satyavathi Vs Pyla Suri Demudu and Another 2011 (12) SCC 189.

under section 125 of Cr.P.C.²³ When the documents are tendered showing the formalities of marriage and substantially proved by placing evidence, strict proof of marriage is not necessary in a proceeding under 125 of Cr.P.C.²⁴ The expression 'Wife' in Section 125 of the Code should be interpreted to mean only a legally wedded wife. There is a divergence of judicial opinion on the interpretation of the word 'wife' used in section 125 Cr.P.C. Therefore, the question "Whether or not presumption of a marriage arises when parties living together for a long time, thus giving rise to a claim of maintenance under section 125 Cr.P.C., was referred to a larger bench by the Hon'ble Apex Court in case of **Chanmuniya Vs Virendra Kumar Singh Kushwaha and Another**²⁵ (and the outcome of the same is pending).

(IV) Divorced wife and her entitlement to claim maintenance:

The term 'wife' in 125 Cr.P.C includes a divorced woman also, who has not remarried.²⁶ A woman who has been divorced can still claim maintenance from her husband under section 125 of Cr.P.C., till she remarries. She is entitled to maintenance even if the divorce was by mutual consent.²⁷ A wife, who has been divorced by the husband, on the ground that the wife has deserted him, is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973.²⁸

A stipulation regarding relinquishment of the right to claim maintenance from the husband in an agreement between the two spouses which formed the basis for divorce by mutual consent is opposed to public policy and cannot be enforced or used by the husband as a shield for avoiding payment of maintenance to the divorced wife in a Court of Law.²⁹

Explanation II to Section 125 of the CrPC employs a legal fiction to recognize a divorced woman as a 'wife,' enabling her to claim maintenance under this provision. However, this fictional recognition of a divorced wife as a 'wife' is restricted solely to the scope of awarding maintenance. It cannot be exaggerated to the irrational extent of suggesting that a divorced wife is compelled to live with her ex-husband.

²³ A.A. Balasundaram Vs A. Vijaya Kumari and another 1990 SCC online AP 155

²⁴ Jitendranath Das Vs Minati Das 2004 SCC online Calcutta 112.

²⁵ AIR 2010 SC (SUPP) 29

²⁶ Vimala Vs Veeraswami 1991 (2) SSC 295.

²⁷ Gurmit Kaur Vs Surjit Singh @ Jeet Singh (1996) 1 SCC 39: AIR online 1995 SC 598.

²⁸ Dr. Swapan Kumar Banerjee v. State of WB AIR 2020 SC (CRIMINAL) 316

²⁹ Vinita Devangan Vs Rakesh Kumar Devangan AIR 2010(NOC) 117(CHH).

The rationale behind granting maintenance to a divorced wife is often rooted in the reality that a woman may become destitute after divorce. If she is unable to support herself or remains unmarried, the man who was once her husband retains a legal duty and obligation to provide maintenance until she remarries.

(V) Nature of proceedings:

Proceedings for maintenance in a criminal court are more in the nature of Civil proceedings only, the criminal process is applied for the purpose of summary and speedy disposal in the interest of society. So that helpless wives and children are not left on the road while those who are maintain them have the capacity to do so. The relief given under this chapter is essentially of Civil nature. It prescribes a summary procedure for compelling a man to maintain his wife or children.³⁰ Proceedings under section 125 of Cr.P.C are of civil nature.³¹

(VI) Application is not a pre-requisite for granting interim maintenance:

Even in the absence of a formal application for interim maintenance or an accompanying affidavit, the statement made by the wife as a witness can be treated as an application, without standing for any technicalities as to the form. This statement, given under oath before the court and in person, carries more weight than a prepared affidavit signed by the party. Therefore, it can be considered as an application or affidavit, as the case may be.³² Where the petitioner is in distress and unable to maintain herself and if the Magistrate comes to the conclusion that there is immediate need to grant interim maintenance, the court can grant interim maintenance even without an application.³³

Where the averments of the main petition clearly show that she is unable to maintain herself and is begging others, taking that into consideration in the circumstances of the case, though application was not signed by the petitioner and signed by the counsel, it is not desirable to dismiss the application on technical grounds, particularly in a case of this nature.³⁴

³⁰ Nand Lal Misra Vs Kanhaiya Lal Misra AIR 1960 SC 882.

³¹ Vijaya Kumar Prasad Vs State of Bihar and others AIR 2004 SC 2123

³² Chitti Prasad Rao Vs Chitti Asiri Polamma 1993 SCC OnLine AP 327: 1993 (1) ALT (Cri.) 421.

³³ Balram Argidda Vs A. Chandamma and Another 1997 Cri.L.J. 1305 (AP).

³⁴ Balram Argidda Vs A. Chandamma and Another 1997 Cri.L.J. 1305 (AP).

(VII) Husband's moral obligation to maintain his wife:

Duty to provide maintenance has to be fulfilled even by earning money by physical labour.³⁵ An able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife.³⁶ It is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.³⁷

The Hon'ble High Court of Allahabad in **Hardev Singh v. State of U.P.**³⁸, held even if a person has become a Sadhu (saint), that does not absolve him from the duty to maintain his wife and children.

It was held as early in 1930s by the Hon'ble High Court of Rangoon in **Maung Tin v. Ma Hmin**³⁹ that "a man is not, and ought not to be, permitted by his own voluntary act to free himself from the elementary duty of maintaining his wife and children and he is amenable to the provisions of Section 488 (125 CrPC), notwithstanding the fact that he has adopted the yellow robe and become a member of the 'Sangha'."

The Hon'ble Apex Court in **Rajnesh V. Neha**,⁴⁰ held "*the plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied*"

The Hon'ble Apex Court in **Bhuvan Mohan Singh v. Meena**⁴¹, held that duty of the husband to provide maintenance has to be fulfilled even by earning money by physical labour.

In light of the above, the husband is obligated to maintain his wife. He cannot be allowed to claim financial inability as a defense as long as he possesses the capacity to earn. It is also implausible to accept that a person who was financially capable of supporting a family at the time of marriage would suddenly be completely without any source of income.

³⁵ Bhuvan Mohan Singh Vs Meena AIR 2014 SC 2875.

³⁶ Reema Sulkan Vs Sumar Singh Sulkan AIR 2018 SC (CrI) 1384.

³⁷ Shamima Farooqui Vs Shahid Khan AIR 2015 SC 2025.

³⁸ 1995 ALL. L. J. 446

³⁹ AIR 1933 RANGOON 138: 1933 CRI. L. J. 815

⁴⁰ AIR 2021 SC 569 : 2020 SCC OnLine SC 903 39

⁴¹ AIR 2014 SC 2875 : (2015) 6 SCC 353

(VIII) Desertion and its impact on maintenance:

Desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. Desertion means not the withdrawal from a place, but from a state of things.⁴²

Desertion is not a mere act of moving from one place to another place, but it is the act of detaching from one set of circumstances, however, cogent and conducive to live and switching to another set of chosen circumstances, however legally and morally objectionable may be.⁴³ Merely because the wife left house for four or five years and did not come back is no ground to justify second marriage by the husband and it will not disentitle the wife from claiming maintenance.⁴⁴

Reasonable grounds for the wife to stay away from husband:

Wife refusing to live with her husband on ground of impotency - It is a just cause and she is entitled to maintenance.⁴⁵ Desertion isn't just about changing the address of one of the spouses. It involves leaving behind a stable situation and choosing a new way of life, even if that choice is not legally or ethically acceptable. It's not just about moving away; it's about abandoning the whole relationship and its responsibilities. In simple Desertion is intentional act of leaving behind not just a physical place but also the relationship and its responsibilities.

Conclusion:

Hence from studying this article it can be gathered that husband cannot deny the maintenance of his legally wedded wife by alleging that she is living separately or by taking a plea that he is unemployed. Section 125 of the Criminal Procedure Code extends beyond a simple legal remedy. It serves as a lifeline for those struggling with dire financial difficulties.

⁴² Gangabai Vs Shriram @ Shrikishan 1991 Cri.L.J., 2018.

⁴³ Sk Khaja Mohideen v. Sk Parveen 2020 CRI.L.J. 3454: AIR ONLINE 2019 AP 85

⁴⁴ Saygobai Vs Chueeru Bajrangi AIR 2011 SC 1557: (2010) 13 SCC 762.

⁴⁵ Siraj mohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan AIR 1981 SC 1972