

## Maintenance U/S 125 CrPC

**S.S. Upadhyay**

*Former District & Sessions Judge/  
Former Addl. Director (Training)  
Institute of Judicial Training & Research, UP, Lucknow.  
Member, Governing Body,  
Chandigarh Judicial Academy, Chandigarh.  
Former Legal Advisor to Governor  
Raj Bhawan, Uttar Pradesh, Lucknow  
Mobile : 9453048988  
E-mail : ssupadhyay28@gmail.com  
Website: lawhelpline.in*

**1(A). Nature of provisions u/s 125 CrPC is social justice legislation :** Nature of provisions u/s 125 CrPC is a social justice legislation. Distinct approach should be adopted while dealing with cases u/s 125 CrPC. Drift in approach from "adversarial" litigation to social context adjudication is needed. See : **Badshah Vs. Urmila Badshah Godse and Another, (2014) 1 SCC 188.**

**1(B). Demand/Torture of wife for dowry sufficient reason for separate living :** In the cases noted below, it has been held by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that if the wife is tortured by her husband for demand of dowry or she has a reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demands of dowry by her husband, parents or relations, such an apprehension also would be manifestly a reasonable justification for the wife's refusal to live with her husband. See :

- 1- **Sirajmohammedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan, AIR 1981 SC 1972**
- 2- **Smt. Savitri Pandey Vs. Judge family court Allahabad, 2004 Cr LJ 3934 (All)**
- 3- **Smt. Mithlesh Kumari Vs. Bindhwasani, 1990 Cr LJ 830 (All--LB)**

**1(BB). Affidavit by both parties disclosing their assets and liabilities:** Both the parties shall file their affidavits on the proforma given in Annexures I, II, III the following Supreme Court judgment disclosing their assets and liabilities in all maintenance proceedings including pending proceedings before the Family Court, District Court or Magistrate Court through out the country. See: : **Rajnish Vs Neha, (2021) 2 SCC 324 (Paras 63 to 72, 129)**

**1(C) Impotency of husband ground for wife for separate living :** A wife refusing to live with her husband on the ground of his impotency is a just cause and she is entitled to maintenance u/s 125 Cr PC. See : **Sirajmohammedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan, AIR 1981 SC 1972.**

**1(D). Revisional Court when to set aside findings of facts recorded by lower Court---** Where the High Court in exercise of its revisional powers had set aside the findings of facts recorded by the lower court u/s 125 of the CrPC, it has been held by the Supreme Court that, "it is well settled that the Appellate or Revisional Court while setting aside the finding recorded by the Court below must notice those findings, and if the Appellate or Revisional Court comes to the conclusion that the findings recorded by the Trial Court are untenable, record its reasons for coming to the said

conclusion. Where the findings are findings of fact it must discuss the evidence on record which justify the reversal of the findings recorded by the Court below. This is particularly so when findings recorded by the Trial Court are sought to be set aside by an Appellate or Revisional Court. One cannot take exception to a judgment merely on the ground of its brevity, but if the judgment appears to be cryptic and conclusions are reached without even referring to the evidence on record or noticing the findings of the Trial Court, the party aggrieved is entitled to ask for setting aside of such a judgment". See : **Deb Narayan Halder Vs. Anushree Halder, 2003(47)ACC 897 (SC)**

**2 (A).Live-in-relationship & presumption of marriage u/s 114 Evidence Act:** Live-in-relationship between parties if continued for a long time, cannot be termed in as "walk in & walk out". There is a presumption of marriage between them. See ...

**(i).Rajnish Vs Neha, (2021) 2 SCC 324 (Paras 39,40)**

**(ii). Madan Mohan Singh Vs. Rajanikant, AIR 2010 SC 2933.**

**2(B).Live-in relationship when doesnt amount to marriage** : Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act,2005.All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

(a) the couple must hold themselves out to society as being akin to spouses.

(b) they must be of legal age to marry

(c) the must be otherwise to qualified to enter into a legal marriage, including being unmarried.

(d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

See.... **D. Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**

**2(C).Live-in relationships & its preconditions to be treated as marriage** : Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act,2005.All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

(a) the couple must hold themselves out to society as being akin to spouses.

(b) they must be of legal age to marry

(c) they must be otherwise to qualified to enter into a legal marriage, including being unmarried.

(d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

See : **D. Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**

**3(A).Standard of proof of marriage :** In the case of **Dwarika Prasad Satpathy Vs.**

**Bidyut Prava Dixit, AIR 1999 SC 3348**, it has been held by the Hon'ble Supreme Court that the validity of the marriage for the purpose of summary proceeding u/s 125 Cr PC is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence 494 of the IPC. If the claimant in proceedings u/s 125 of the code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation the party who denies the marital status can rebut the presumption. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings u/s 125 Cr PC from the evidence which is led if the magistrate is prima facie satisfied with regard to the performance of marriage in proceedings u/s 125 Cr PC which are of summary nature, strict proof of performance of essential rites is not required. After not disputing the paternity of the child born few days after marriage and after accepting the fact that marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the husband to contend in proceeding u/s 125 Cr PC that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision u/s 125 Cr PC is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment. Moreover order passed u/s 125 Cr PC does not finally determine the rights and liabilities of parties and parties can file civil suit to have their status determined.

**3(B).Standard of proof of marriage :** In the case of **Sumitra Devi Vs. Bhikan**

**Choudhary, 1985 Cr LJ 528 (SC)**, in a case of claim for maintenance u/s 125 Cr PC, it has been held by the Hon'ble Supreme Court that in order that there may be a valid marriage according to Hindu Law, certain religious rites have to be performed. Invoking the fire and performing Saptapadi around the sacred fire have been considered by the Supreme Court to be two of the basic requirements for a traditional marriage. It is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship which law accepts.

**3(C).Standard of proof of marriage :** In the cases of **Amit Agarwal Vs. State of UP,**

**2007 (1) ALJ 277 (All) and Bhirari Singh Vs. State of UP, 1990 Cr LJ 844 (sic) (All)** it has been held by the Hon'ble Allahabad High Court that Sec. 125 Cr PC proceeds on the basis of de facto marriage and not on marriage de jure because the foundation for payment of maintenance u/s 125 Cr PC is the existence of conjugal relationship. Interpretation of laws which are enacted as measures of Social welfare

has to be made in a manner so as to give effect to their enforcement irrespective of minor crucial obstacles. Sec. 125 Cr PC is a Social Welfare legislation meant for benefit of destitute women and the operation of the same should not be allowed to be obstructed or hindered because of pleas about marriage being void, voidable or irregular.

**3(D).Woman not lawfully married not to be treated as ‘wife’ and not entitled to maintenance u/s 125 Cr PC** : In the case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC)**, it has been held that the legislature considered it necessary to include within the scope of Sec. 125 an illegitimate child but it has not done so with respect to woman not lawfully married. As such, however, desirable it may be to take note of the plight of the unfortunate woman, who unwittingly enter into wedlock with a married man the legislative intent being clearly reflected in Sec. 125 of the Cr PC, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression ‘wife’ this may be an inadequacy in law, which only the legislature can undo. Even if it is true that husband was treating the woman as his wife it is really inconsequential. It is the intention of the legislature which is relevant and not the attitude of the party. The principle of estoppel cannot be pressed into service to defeat the provision of Sec. 125 of the Cr PC.

**4(A-1).Second wife when entitled to maintenance u/s 125 CrPC ?** : Where the husband had duped the second wife by not revealing to her the fact of his earlier marriage, it has been held by the Supreme Court that the husband cannot deny maintenance to his second wife u/s 125 CrPC in such a case and he cannot be permitted to take advantage of his own wrong by raising the contention that such second marriage during the subsistence of his first marriage, being void under the Hindu Marriage Act, 1955, the second wife was not entitled to maintenance as she was not his legally wedded wife. The earlier judgments of the Supreme Court reported in (i) **Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav, (1988) 1 SCC 530** and (ii) **Savitaben Somabhai Bhatiya Vs. State of Gujarat, (2005) 3 SCC 636** supporting the said contention of the husband would apply only in those circumstances where a woman marries a man with full knowledge of subsistence of his first marriage. Second wife thus having no knowledge of first subsisting marriage is to be treated as legally wedded wife for purposes of claiming maintenance. See : **Badshah Vs. Urmila Badshah Godse and Another, (2014) 1 SCC 188**.

**4(A-2).Second wife when not entitled to maintenance** : Second wife marrying Hindu male having legally wedded wife, after coming into force of the Hindu Marriage Act, 1955 is *void ipso jure* u/s 5(i) of the Act and is not entitled to claim of maintenance either under the Hindu Marriage Act, 1955 or u/s 125 of the CrPC. See : **Smt. Kiran Dhar Vs. Alok Berman, 2014 (84) ACC 807 (All)**.

**4(A-3).Second wife when not entitled to maintenance** : Second wife marrying Hindu male having legally wedded wife, after coming into force of the Hindu Marriage Act, 1955 is *void ipso jure* u/s 5(i) of the Act and is not entitled to claim of maintenance either under the Hindu Marriage Act, 1955 or u/s 125 of the CrPC. See.... **Mangala Bhivaji Lad Vs. Dhondiba Rambhau Aher, AIR 2010 Bombay 122.**

**4(B). Second wife when entitled to maintenance u/s 125 Cr PC** : Word 'wife' includes divorced wife. However, if second wife has not even been married she could not be divorced and second wife cannot claim to be wife of her husband unless it is established that husband was not earlier married to another woman. See :

1. **D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479.**
2. **Bai Tahira Vs. Ali Hussaid Fissalli Chothia, AIR 1979 SC 362 (Three-Judge Bench)---***Case of divorced Muslim woman*

**(C) Allegations of second marriage by husband how to be proved** : Where it was alleged by wife u/s 125 CrPC that husband was married to one 'L' but no notice was issued to 'L' nor she was made party to proceedings, it has been held that any declaration about the marital status of 'L' vis-a-vis husband is wholly null and void as it will be violative of rules of natural justice. See : **D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479.**

**(D). Second marriage or re-marriage by husband when not proved** : Where the wife had alleged that her husband had contracted a second marriage and filed a complaint against her husband for an offence u/s 494 IPC, the dismissal of complaint and acquittal of husband u/s 494 IPC cannot be taken against the wife to be a just ground for her refusal to live with her husband. The court must not loose the fact how it would be difficult for the wife to prove the second marriage. To prove the second marriage as fact essential ceremonies constituting it must be proved and if second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community conviction u/s 494 IPC ought not to be made. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Proviso to sub-sec. (3) would squarely apply and justify refusal of the wife to live with her husband. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise. See--- **Rajathi Vs. C. Ganesan, AIR 1999 SC 2374**

4. **Irretrievable breakdown of marriage & divorce** : When the break down of marriage is irretrievable then divorce should not be withheld. See : **Poornima Mishra Vs. Sunil Mishra, 2010(3) ALJ 555.**

5. **Bigamous child entitled to maintenance** : Even though bigamous marriage is illegal u/s 11 of the Hindu Marriage Act, 1955 but when after such marriage Hindu

male and female are living together for a number of years as husband and wife, the child born as a result of such union acquires legitimate status u/s 16(1) of the above Act and such child is entitled to maintenance u/s 125 Cr PC. See : **Bakulabai Vs. Gangaram, (1988) SCC 537.**

6. **Power of revisional court against an order passed u/s 125 CrPC** : (A) Finding of magistrate on disputed questions of fact recorded after full consideration of evidence should not be disturbed by revisional court in absence of any error of law. See--- **Bakulabai Vs. Gangaram, (1988) SCC 537.**
- (B) **Second revision not maintainable**: Where a revision filed by the husband against order of maintenance granted to wife u/s 125 CrPC was rejected, a second revision by the husband through his minor son would not be maintainable. See : **Preetpal Singh Vs. Smt. Ishwari Devi, 1991 CrL.J 3015 (All)**
- 7(A). **Earning wife & its effect** : In the case **Chaturbhuj Vs. Sita Bai, AIR 2008 SC 530**, where the husband had placed material to show that the wife was earning some income, it has been held by the Hon'ble Supreme Court that it is not sufficient to rule out the application of Sec. 125 Cr PC. It has to be established that with the amount she earned, the wife was able to maintain herself. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient, she can claim maintenance u/s 125 Cr PC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. The factual conclusions of the court that the wife is unable to maintain herself cannot be interfered with in the absence of perversity.
- 7(B). **Earning wife & its effect** : Merely because wife was earning something, it would not be a ground to reject her claim for maintenance u/s 125 CrPC. See : **2015 CrLJ 659 (SC).**
8. **Upper limit of amount of maintenance u/s 125 CrPC** : (A) After the amendment to section 125 CrPC which is a Central Act, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words "not exceeding five hundred rupees in the whole", all State amendments to section 125 CrPC by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid. See : **Manoj Yadav vs. Pushpa, AIR 2011 SC 847.**
- (B) **Upper limit of amount of maintenance u/s 125 CrPC in the State of U.P** : After the amendment to section 125 CrPC which is a Central Act, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words "not exceeding five hundred rupees in the whole", all State amendments to section 125 CrPC by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid. See : **Manoj Yadav vs. Pushpa, AIR 2011 SC 847.**

(9) **Nature of proceeding u/s 125 Cr PC is civil** :The jurisdiction of magistrate under chapter IX Cr PC is not strictly a criminal jurisdiction. Proceedings u/s 125 CrPC are civil in nature . See :

(i) **Vijay Kumar Prasad Vs. State of Bihar, (2004) 5 SCC 196.**

(ii) **Savitri Vs. Govind Singh Rawat, (1985) 4 SCC 337.**

(10) **Interim maintenance u/s 125 CrPC (Second proviso to Section 125 (1) Cr PC) :**

(A) In appropriate cases, magistrate may even pass interim order of maintenance ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. The magistrate may however insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. See---**Savitri Vs. Govind Singh Rawat, (1985) 4 SCC 337**

(B) **Ex parte order of interim maintenance u/s 125 Cr PC** : In appropriate cases, magistrate may even pass interim order of maintenance ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. The magistrate may however insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy him self that there is a prima facie case for making such an order. See : **Savitri Vs. Govind Singh Rawat, (1985) 4 SCC 337.**

(BB)**Minor daughter entitled to interim maintenance u/s 125 Cr PC** : Where the minor daughter attained majority during the pendency of application u/s 125 Cr PC, it has been held that she would be entitled to get interim maintenance up to the date of attaining majority. See : **Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)**

(C-1) **Court should record reasons whether maintenance u/s 125 CrPC would be payable from date of order or from date of application ?** : Provision of S. 125(2) expressly enables the Court to grant maintenance from the date of the order or from the date of the application. However, Section 125 of the CrPC must be construed with sub-Section (6) of Section 354 of the CrPC. Thus, every final order under Section 125 of the CrPC and other Section 354 must contain points for determination, the decision thereon and the reasons for such decision. In other words, Section 125 and Section 354(6) must be read together. Section 125 of the CrPC, therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the CrPC, the Court should record reasons in support of the order passed by it, in both eventualities. The

purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case. See : **Jaiminiben Hirenghai Vyas & Another Vs. Hirenghai Rameshchandra Vyas & another**, AIR 2015 SC 300 (Paras 6 & 7).

**(C-2) Interim Maintenance u/s 125 Cr PC whether from date of order or from date of application?** : Magistrate can provide u/s 125 Cr PC for interim maintenance with effect from date of order or from date of application. Sec. 125 Cr PC does not require magistrate to give separate reasons if he allows interim maintenance from the date of application. It is not mandatory for the magistrate to give reasons while granting maintenance from the date of applications, although, it is proper to do so. Non assigning the reasons does not vitiate the order of Magistrate. It is the discretion of magistrate u/s 125 (2) Cr PC to grant maintenance from the date of order or from the date of application. See :

1. **Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)**
2. **Jagat Narain Vs. Sessions Judge, Mainpuri, 1998 (1) A Cr R 315 (All-DB)**
3. **Paras Nath Kurmi Vs. Sessions Judge, Mau, UP Nirnay Partrika 299(All)**
4. **Satish Chandra Gupta Vs. Anita, 1994 A Cr R 631 (All)**

11. **Live-in relationship when doesnt amount to marriage** : (A) Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act,2005. All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

- (a) the couple must hold themselves out to society as being akin to spouses.
- (b) they must be of legal age to marry
- (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. See : **D.Velusamy Vs. D.Patchaiammal**, AIR 2011 SC 479.

**(B). Live-in relationships & its preconditions to be treated as marriage** : Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act,2005. All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions.

- (a) the couple must hold themselves out to society as being akin to spouses.
- (b) they must be of legal age to marry
- (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried.



(d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. See.... **D.Velusamy v. D.Patchaiammal**, AIR 2011 SC 479.

(C). **Live-in-Relationship Without Marriage & Maintenance....**Living as husband & wife for considerable period without marriage whether or not entitles the woman, has been referred to larger bench by the supreme court. See... **2011 CrLJ 96 (SC)**.

(12). **Reasons must in granting maintenance u/s 125 CrPC from date of application...**

(A). Order of Magistrate granting maintenance u/s 125 CrPC from date of application without recording reasons is liable to set aside. See---

1. **Amit Kumar Das Vs. Basanti Das 2011 CrLJ 1187 (Calcutta)**
2. **Shail Kumari Devi Vs. Krishan Bhagwan Pathak, AIR 2008 SC 3006**

(AA) **Reasons granting maintenance from date of applications not necessary :**

Magistrate can provide u/s 125 Cr PC for interim maintenance with effect from date of order or from date of application. Sec. 125 Cr PC does not require magistrate to give separate reasons if he allows interim maintenance from the date of application. It is not mandatory for the magistrate to give reasons while granting maintenance from the date of applications, although, it is proper to do so. Non assigning the reasons does not vitiate the order of Magistrate. It is the discretion of magistrate u/s 125 (2) Cr PC to grant maintenance from the date of order or from the date of application. See :

1. **Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)**
2. **Jagat Narain Vs. Sessions Judge, Mainpuri, 1998 (1) A Cr R 315 (All-DB)**
3. **Paras Nath Kurmi Vs. Sessions Judge, Mau, UP Nirnay Partrika 299(All)**
4. **Satish Chandra Gupta Vs. Anita, 1994 A Cr R 631 (All)**

(B). **Power of Magistrate to grant maintenance u/s 125 CrPC from**

**date of application** : Maintenance u/s 125 CrPC can be granted from the date of application if the court thinks fit and proper and it is within the power of the court to grant such maintenance and in such circumstances the court is required to record reasons in support of such order. See...

1. **Shail Kumari Devi vs. Krishan Bhagwan Pathak, AIR 2008 SC 3006**
2. **Saygo Bai vs. Chueeru Bajrangi 2011 CrLJ 1007 (SC)**
3. **Amit Kumar Das vs. Basanti Das 2011 CrLJ 1187 (Calcutta)**

(13). **Major unmarried daughter not entitled to maintenance u/s 125 CrPC** : A major unmarried daughter is not entitled to maintenance u/s 125 CrPC. See : **Smt. Usha vs. Mahendra Pal Singh, 2011 Cr LJ (NOC) 165 (All)**

(14). **Wife not entitled to maintenance u/s 125Cr PC when living separately by mutual**

**consent** :When (Muslim) wife is living separately from her husband by mutual consent (compromise), she is not entitled to maintenance from her husband u/s 125 Cr PC. But if her case is that she was not living separately by mutual consent, proof

for separate living by mutual consent is not necessary. See :**Bai Tahira Vs. Ali Hussaid Fissalli Chothia, 1979 SC 362(Three-Judge Bench)** : *Case of divorced Muslim woman.*

**(15) Personal law of parties relevant for claim of maintenance u/s 125 Cr PC** : The question of entitlement of maintenance u/s 125 Cr PC cannot but be decided by reference to personal law of the parties. See : **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC)**

**15A. Financial position of parents of wife not material for determining quantum of maintenance:** Financial position of parents of wife would not be material while determining the quantum of maintenance. An order of maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income for his or her support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for his or her support. See:

**(i). Rajnesh Vs Neha, (2021) 2 SCC 324 (Para 79)**

**(ii). Manish Jain Vs Akanjsha Jain, (2017) 15 SCC 801**

**(16) Enhancement of amount of maintenance permissible u/s 127 Cr PC** : In the case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC)**, it has been held by the Hon'ble Supreme Court that the request for enhancement of amount of maintenance already granted u/s 125 Cr PC cannot be refused on the technical ground that at the time of filing of the application u/s 125 Cr PC some maximum limit of maintenance was prescribed. Moreover Sec. 127 Cr PC permits increase in the quantum of maintenance.

**17(A).** Divorced wife entitled to maintenance u/s 125 CrPC: A divorced wife can claim maintenance u/s 125 CrPC from her former husband as even after divorce she continues to remain wife of her former husband by fiction of law under second Explanation to Section 125 CrPC for purposes of maintenance only. See; Dr. Swapan Kumar Banerjee Vs. State of West Bengal, AIR 2019 SC 4748.

**17(AA). A divorced Muslim wife is entitled to maintenance u/s 125 CrPC so long as she does not remarry** : A divorced Muslim wife is entitled to maintenance u/s 125 CrPC so long as she does not remarry. See :

**(i) Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666.**

**(ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench)**

**(iii) Iqbal Bano Vs. State of UP, (2007) 6 SCC 785.**

**(iv) Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.**

**17(B). Application for maintenance u/s 125 CrPC by a divorced Muslim wife is maintainable till she does not marry irrespective of her application u/s 5 of the Muslim Women (Protection of Right on Divorce) Act, 1986** : Application for

maintenance u/s 125 CrPC by a divorced Muslim wife is maintainable till she does not marry irrespective of her application u/s 5 of the Muslim Women (Protection of Right on Divorce) Act, 1986. See :

- (i) **Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666**
- (ii) **Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench)**
- (iii) **Iqbal Bano Vs. State of UP, (2007) 6 SCC 785**
- (iv) **Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.**

**17(C). A divorced Muslim wife entitled to maintenance u/s 125 CrPC even in post-iddat period as long as she does not marry :**

A divorced Muslim wife entitled to maintenance u/s 125 CrPC even in post-iddat period as long as she does not marry.

See :

- (i) **Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666**
- (ii) **Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench)**
- (iii) **Iqbal Bano Vs. State of UP, (2007) 6 SCC 785.**
- (iv) **Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.**

**17(D). Muslim Woman and her children entitle to maintenance u/s 25 CrPC as Section 3(1)(b) of the Muslim Women (Protection of Right on Divorce) Act, 1986 does not affect such right under Section 125 CrPC :**

Muslim Woman and her children entitle to maintenance u/s 25 CrPC as Section 3(1)(b) of the Muslim Women (Protection of Right on Divorce) Act, 1986 does not affect such right under Section 125 CrPC. Benefit of Section 125 CrPC is available irrespective of religion and it would be unreasonable, unfair and inequitable to deny this benefit to the children only on ground of their being bourn of Muslim parents. See :

- (i) **Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.**
- (ii) **Noor Saba Khatoon Vs. Mohd. Quasim, (1997) 6 SCC 233.**

**18. Maintenance of elderly and senior citizens :** Art.21 of the Constitution of India in its expansive meaning encompasses various rights of elderly persons/senior citizens such as right to dignity, right to health, right to adequate pension and right to shelter. There is need to continuously monitor implementation of rights of elderly persons/senior citizens. Thus a continuing mandamus is required to be issued in the present case as it is a well-recognised practice for enforcing the social justice postulated by the Preamble. The Supreme Court issued directions for enforcement of the said rights and the statutory rights under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and other welfare schemes. Under the Indira Gandhi National Old Age Pension Scheme, Rs 200/- and Rs 500/- was fixed for persons between age of 60-70 and above 80 respectively. Said amount was fixed more than a decade ago. No doubt, under the said Scheme, the State Governments have an obligation also but their contribution varies from Rs 500/- to Rs 200/-. The right to live with dignity is a fundamental right recognised by Article 21 of the

Constitution. Availability of adequate finances is necessary for a person to live a life of dignity. An elderly person, particularly someone who is in an old age home, is unable to look after himself needs financial assistance. This can be made available only if there is a viable pension scheme that is implemented with sincerity and which can be taken advantage of by an elderly person. **See: Ashwani Kumar Vs Union of India and others (2019) 2 SCC 636**

**19.Execution of order and recovery of maintenance amount:** An order or decree of maintenance may be enforced u/s 28-A of the Hindu Marriage Act, u/s 20(6) of the DV Act and u/s 125 CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of CPC, more particularly by detention of the respondent and attachment of property etc as provided by Sections 51,55, 58,60 CPC read with Order 21 CPC. **See: Rajnesh Vs Neha, (2021) 2 SCC 324 (Paras 125,132)**

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