



RPFC No. 100043 of 2020

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IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 07TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR JUSTICE E.S.INDIRESH

REV.PET FAMILY COURT NO. 100043 OF 2020 (-)

BETWEEN:

1. SANGEETA

2. KAVERI

3. LOKESH

4. KALPANA





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CHILDREN R/BY THEIR NATURAL
MOTHER AS GUARDIAN.

...PETITIONERS

(BY SRI. PAVITRA N. KAVALI, ADVOCATE)

AND:

BAPU

...RESPONDENT

THIS RPFC IS FILED UNDER SEC.115 OF CPC R/W SEC.19(4) OF THE FAMILY COURTS ACT, 1984, AGAINST THE JUDGMENT AND ORDER DATED 5.11.2020, IN CRL.MISC. NO.145/2020, ON THE FILE OF THE FAMILY COURT, DHARWAD, PARTLY ALLOWING THE PETITION FILED UNDER SEC.125 OF CR.P.C

THIS PETITION COMING ON FOR ORDER THIS DAY THE COURT MADE THE FOLLOWING.

ORDER

This petition is filed by the petitioners in Crl. Misc. No.145/2020 on the file of the Family Court, Dharwad, challenging the order dated 05.11.2020 on the file of the Family Court, Dharwad decline to accept the petition on the ground of territorial jurisdiction.



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2. Heard the learned counsel for the petitioner. Respondent is served.

3. The Family court raised an objection with regard to the maintainability of the petition on the ground that the address shown in the cause title and the documents produced by the petitioners do not tally and therefore, the office objection was accepted by the learned Judge of the Family Court and returned the petition to the petitioner for presentation of the same before the jurisdictional Court.

4. In this matter, though relevant documents have not been produced by the petitioners to say that they are residing at Dharwad, however, the petitioner has filed an affidavit stating that, she is residing with her Aunt Meenakshi Ritti's House, at Dharwad. It has also come in the finding of the Family Court that the said Meenakshi Ritti is residing at Dharwad and therefore, the Family Court ought to have given an opportunity to the petitioners to have their say in the matter with regard to



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the proof of their residing in the house of their Aunt-Meenakshi Ritti. Since the petition is filed under Section 125 of Cr.P.C. which is a summary proceedings, the same requires immediate action by the Family court to safeguard the destitute wife and children. In the case of ABHILASH Vs. PARKASH, reported in AIR 2020 SC 4355, the Hon'ble Apex Court held that, the purpose of summary proceedings provided under Section 125 of Cr.P.C., is to provide immediate relief to the applicant. In the case of DWARIKA PRASAD SATPATHY Vs. BIDYUT PRAVA DIXIT AND ANOTHER reported in AIR 1999 SC 3348, the Hon'ble Supreme Court observed that the provision contained under Section 125 of Cr.P.C. is a measure of social justice extended to protect wife and children and to prevent vagrancy and destitution. It provides speedy remedy to deserted women. It is also well established principle in law that strict proof of marriage is not a condition precedent for providing maintenance and the reasonable period of living is sufficient [(2010) 10 Scale 602]. In the



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case of RAJNESH Vs. NEHA AND ANOTHER, reported in (2021) 2 SCC 324, the Hon'ble Apex Court observed that, the remedy provided under Section 125 of Cr.P.C. is a measure of social justice as envisaged under provision of the Constitution of India to prevent wife and children from falling into destitution and vagrancy. In the case of BHUWAN MOHAN SINGH Vs. MEENA AND OTHERS, reported in (2015) 6 SCC 353, it was held that, granting of maintenance to wife is for her sustenance. Sustenance does not mean animal existence, but signifies leading life in a similar manner, as she would have lived in the house of her husband. The relevant paragraph is extracted below:

7. *At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by the Family courts Act, 1984. In Dukhtar Jahan v. Mohd. Farooq, reported in (1987) 1 SCC 624, the Court opined that;*

"16. ...Proceedings under Section 125 [of the Code), it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.



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8. A three-Judge Bench in *Vimala (K) v. Veeraswamy (K)*, while discussing about the basic purpose under Section 125 of the Code, opined that: (SCC p. 378, para 3)

"3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife."

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat*, while adverting to the dominant purpose behind Section 125 of the Code, ruled that: (SCC p. 489, para 15)

"15.... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

10. In *Chaturbhuj v. Sita Bai*, reiterating the legal position the Court held: (SCC p. 320, para 6)

"6. Section 125 Cr.P.C is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a



man to maintain hi wife, children and parents when they are unable to maintain themselves.

The aforesaid position was highlighted in Savitaben Somabhai Bhatiya Vs. State of Gujarat.

11. Recently in Nagendrappa Natikar v. Neelamma, it has been that it is a piece of social legislation which provides for a summary speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

12. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in KA Abdul Jaleel T.A. Abdul Jaleel v. T.A. Shahida, while highlighting on the purpose of bringing in the Family courts Act by the legislature, opined thus (SCC p. 170, paragraph 10)

"10. The Family Courts Act enacted to provide for the establishment of Family Courts with a view to promote conciliation and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith."

13. The proceeding before the Family Court was conducted without being alive to the purpose of Objects and Reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments i routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before



it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.

14. *While dealing with the relevant date of grant of in Shail Kumari Dev v. Krishan Bhagwan Pathak, the Court referred to the Code of Criminal Procedure (Amendment) Act, 2001 (50 of 2001) and came to hold Even after the amendment that (SCC p. 639, para 21)*

"21. Even after the amendment of 2001, an order for payment of maintenance can be made by a Court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the amount of maintenance can be paid from that date i.e. from the date of application."

The Court referred to the decision in Krishna Jain v. Dharam Raj Jain, wherein it has been stated that: (Shail Kumari Devi case, SCC p. 645, para 37)

37. *To hold that, normally maintenance should be made payable not from the date of the application unless from the date of the order such order is backed by reasons would amount to inserting something more in the sub-section which the legislature never intended. The (High Court had] observed that it was unable to read in sub-section (2) laying down any rule to award maintenance from the date of the order or that the grant from the date of the application is an exception."*

The High Court had also opined that whether maintenance is granted from the date of the order or from the date of application, the Court is required to



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record reasons as required under sub-section (6) of Section 354 of the Code.

15. After referring to the decision in Krishna Jain, the Supreme Court adverted to the decision of the High Court of Andhra Pradesh in K. Sivaram V. K. Mangalamba wherein it has been ruled that the maintenance would be awarded from the date of the order and such maintenance could be granted from the date of the application only by recording special reasons. The view of the learned Single Judge of the High Court of Andhra Pradesh stating that it is a normal rule that the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance was not accepted by this Court. Eventually, the Court ruled thus: (Shail Kumari Devi case, SCC p. 647, para 43)

"43. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect."

5. It is also useful to refer to the law declared by the Hon'ble Apex Court in the case of NAGENDRAPPA NATIKAR VS. NEELAMMA, reported in (2014) 14 SCC 452, wherein, at paragraph 10 of the Judgment, it is held as follows:



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"10. Section 125 of Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties, which is in the nature of a civil proceedings, though are governed by the provisions of Cr.P.C. and the order made under Section 125 of Cr.P.C. is tentative and is subject to final determination of the rights in a civil Court."

6. In the case of SHAMIMA FAROOQUI Vs. SHAHID KHAN, reported in (2015)5 SCC 705, the Hon'ble Supreme Court extensively dealt with the scope and ambit of Section 125 of Cr.P.C. In the said judgment, it is observed thus:

"It is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny."

7. Having taken note of the core question to be answered in this petition relating to jurisdiction of the applicant under Section 125 of Cr.P.C., it is relevant to



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extract Section 126(1)(b) and (c), of Cr.P.C., which relate to the maintenance of wife and children under Section 125 of Cr.P.C. The same is extracted below:

"126. Procedure - (1) Proceedings under Section 125 may be taken against any person in any district -

(b) where he or his wife resides, or

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

8. In this regard it is apt to consider the law declared by the Apex Court in the case of VIJAY KUMAR PRASAD VS. STATE OF BIHAR AND OTHERS, reported in (2004) 5 SCC 196, wherein, the observation made at paragraphs 11 to 15 read as under:

"11. The position of law relating to proper jurisdiction was highlighted by this Court Jagir Kaur and Another v. Jaswant Singh (AIR 1963 SC 1521) as follows:

"The crucial words of the sub-section (8) are, "resides", "is" and "where he last resided with his wife". Under the Code of 1882 the Magistrate of the District where the husband or father, as the case may be, resided only had jurisdiction. Now the jurisdiction is wider. It gives three alternative forums. This in our view, has been designedly done by the Legislature to enable a discarded wife or a helpless child to get the much needed



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and urgent relief in one or other of the three forums convenient to them. The proceedings under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language.

12. As noted in the above said judgment the crucial expression for the purpose of jurisdiction in respect of a petition which is filed by a father is not where "parties reside" and "is".

13. It is to be noted that Clauses (b) & (c) of sub section (1) of Section 126 relate to the wife and the children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents. A bare reading of the Section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code.

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

15. As has been noted in Jagir Kaur's case (*supra*) the expression "is" cannot be given the same meaning as the word "reside" or the expression "the last resided". It connotes in the context the presence or the existence of the persons in the district where the proceedings are taken. It is wider in its concept than the



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word "resides" and what matters is his physical presence at the particular point of time. No finding has been recorded by the High Court on this particular aspect which needs a factual adjudication. The stand of the appellant is that he practises in Patna and was not present in Siman physically when the application was filed for maintenance. Respondent No. 2- father has indicated about the son practising in the Patna High Court. Obviously if his son was practising at the time of presentation of petition in the Patna High Court, he could not have been physically present at Siwan, whatever extended meaning may be given to the expression "is". In view of this the position is clear that the Court at Siman has no jurisdiction to deal with the petition. One thing may be noted, which can clear lot of cobwebs of doubt. The expression "is" cannot be construed to be a fleeting presence, though it may not necessarily for considerable length of time as the expression "resides" may require. Although the expression normally refers to the present, often it has a future meaning. It may also have a past signification as in the sense of "has been". (See F.S. Gandhi (Dead) by LRs. V. Commissioner of Wealth Tax, Allahabad (AIR 1991 SC 1866). The true intention has to be contextually culled out."

(Emphasis supplied)

9. At this juncture, with respect to the language employed under Sections 125 and 126 of Cr.P.C. relating to territorial jurisdiction, seeking maintenance by the applicant, it is useful to refer the law declared by the Apex Court in the case of JAGIR KAUR AND ANOTHER VS. JASWANT SINGH, reported in AIR 1963 SC 1521, wherein, the Apex Court at paragraphs 5, 6 and 9 to 12 has observed thus:



"5. The only question in the appeal is whether the Magistrate of Ludhiana had jurisdiction to entertain the petition filed under s. 488 of the Code of Criminal Procedure. The question turns upon the interpretation of the relevant provisions of s. 488(3) of the Code, which demarcates the jurisdictional limits of a Court to entertain a petition under the said section. Section 488 (8) of the Code reads :

"Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child."

The crucial words of the sub-section are, "resides", "is" and "where he last resided with his wife". Under the Code of 1882 the Magistrate of the District where the husband or father, as the case may be, resided only had 'jurisdiction. Now the jurisdiction is wider. It gives three alternative forums. This, in our view, has been designedly done by the Legislature to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. The proceedings under this section are in the nature of civil proceedings. the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So, the words should be liberally construed' without doing any violence to the language.

5. The first word is "resides". A wife can file a petition against her husband for maintenance in a Court in the District where he resides. The said word has been subject to conflicting judicial opinion. In the Oxford Dictionary it is defined as : "dwell permanently or for a considerable time; to have one's settled or usual abode ; to live in or at a particular place". 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 and a temporary residence. Whichever meaning is given to it, one thing is obvious and it is that it does not include a casual stay in, or a flying visit to, a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon



the context and the purpose of a particular statute. In this case the context and purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense. The purpose of the statute would be better served if the word "resides" was understood to include temporary residence. The juxtaposition of the words "is" and "last resided" in the sub-Section also throws light on the meaning of the word "resides". The word "is", as we shall explain later, confers jurisdiction on a Court on the basis of a causal visit and the expression "last resided", about which also we have something to say, indicates that the Legislature could not have intended to use the word "resides" in the technical sense of domicile. The word "resides" cannot be given a meaning different from the word "resided" in the expression "last resided" and, therefore, the wider meaning fits in the setting in which the word "resides" appears. A few of the decisions cited at the Bar may be useful in this context."

9. *The cognate expression "last resided" takes colour from the word "resides" used earlier in the sub-section. The same meaning should -be given to the word "resides" and the word "resided", that is to say, if the word "resides" includes temporary residence, the expression "last resided" means the place where the person had his last temporary residence. But it is said that even on that assumption, the expression can only denote the last residence of the person with his wife in any part of the world and that it is not confined to his last residence in any part of India. If the words "where he last resided with his wife" are construed in vacuum, the construction suggested by the learned counsel for the respondent may be correct; but by giving such a wide meaning to the said expression we would be giving extra territorial operation to the Code of Criminal Procedure. Section 2 (1) of the Code extends the operation of the Code to the whole of India except the States of Jammu & Kashmir; that is to say, the provisions of the Code, including s. 488 (8) thereof, have operation only throughout the territory of India, except the States of Jammu & Kashmir. If so, when sub-s. (8) of s. 488 of the Code, prescribing the limits of Jurisdiction, speaks of the last residence of a person with his wife, it can only mean his last residence with his wife in the*



territories of India. It cannot obviously mean his residing with her in a foreign country, for an Act cannot confer jurisdiction on a foreign court. It would, therefore, be a legitimate construction of the said expression if we held that the district where he last resided with his wife must be a district in India.

10. *In In re Drucker (No. 2) Basden, Ex Parte the words "or in any other place out of England," in sub-s. (6) of s. 27 of the Bankruptcy Act, 1883, fell to be construed. The words were wide enough to enable a Court in England to order that any person who, if in England, would be liable to be brought before it under the section, shall be examined in any place out of England, including a place not within the jurisdiction of the British Crown. The Court held that the words must be read with some limitation and the jurisdiction conferred by that section does not extend to places abroad which are not within the jurisdiction of the British Crown. Wright, J., rejecting the wider construction sought to be placed on the said words, observed at p. 211 :*

"It seems to me that that restriction in prima facie necessary. It is impossible to suppose that the Legislature intended to empower the Court to order the examination of persons in foreign countries ; for instance, in France or Germany."

In Halsbury's Laws of England, Vol. 36, 3rd edn., at p. 429, it is stated :

".....the presumption is said to be that Parliament is concerned with all conduct taking place within the territory or territories for which it is legislating in the particular instance, and with no other conduct. In other words, the extent of a statute, and the limits of its application, are prima facie the same."

It may be mentioned that the said observations are made in the context of Parliament making a law in respect of a part of the territory under its legislative jurisdiction. If it has no power at all to make a law in respect of any foreign territory, the operation of the law made by it cannot obviously extend to a country over which it has no legislative control. It is, therefore, clear



that s. 488(8) of the Code, when it speaks of a district where a person last resided with his wife, can only mean "where he last resided with his wife in any district in India other than Jammu & Kashmir."

11. The third expression is the word "is". It is inserted between the words "resides" and "last resided". The word, therefore, cannot be given the same meaning as the word "resides" or the expression "last resided" bears. The meaning of the word is apparent if the relevant part of the subsection is read. It reads : "Proceedings under this section may be taken against any person in any district where he..... is....." The verb "is" connotes in the context the presence or the existence of the person in the district when the proceedings are taken. It is much wider than the word "resides": it is not limited by the animus manendi of the person or the duration or the nature of his stay. What matters is his physical presence at a particular point of time. This meaning accords with the object of the chapter wherein the concerned section appears. It is intended to reach a person, who deserts a wife or child leaving her or it or both of them helpless in any particular district and goes to a distant place or even to a foreign country, but returns to that district or a neighbouring one on a casual or a flying visit. The wife can take advantage of his visit and file a petition in the district where he is during his stay. So too, if the husband who deserts his wife, has no permanent residence, but is always on the move, the wife can catch him at a convenient place and file a petition under s. 488 of the Code. She may accidentally meet him in a place where he happens to come by coincidence and take action against him before he leaves the said place. This is a salutary provision intended to provide for such abnormal cases. Many illustrations can be visualized where the utility of that provision can easily be demonstrated.

12. To summarize : Chapter XXXVI of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose. Section 488 prescribes alternative forums to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief. Proceedings under the section can be taken



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against the husband or the father, as the case may be, in a place where he resides, permanently or temporarily, or where he last resided in any district in India or where he happens to be at the time the proceedings are initiated.

10. On perusal of the aforementioned finding recorded by Hon'ble Supreme Court, since Section 125 of Cr.P.C is a social measure providing immediate relief to the destitute wife and children, prima-facie, accepting the duly sworn affidavit by aggrieved parties (wife and children) that they are residing away from the matrimonial home and the address shown in the affidavit is to be accepted. Indeed the Family Court ought to have accepted the address provided in the petition supported by an affidavit by the petitioners and should have issued notice to the respondent. Raising objection with regard to residential proof of the petitioners at that juncture itself would defeat the very purpose of scope of Section 125 of Cr.P.C. Undisputably, the affidavit is supported by an application and the petition is preferred by the wife and children seeking maintenance. It is also recorded by the deponent in the said affidavit that they are residing



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separately from the husband/father and therefore, I am of the view that raising objection at the initial stage, directing the petitioners to provide a residential address with regard to the jurisdiction aspect, would defeat the entire legislative intention of Section 125 of Cr.P.C. May be, the jurisdictional aspect is required with regard to the competency of the Court, however, such a requirement may be an exception to the provisions under Section 125 of Cr.P.C. for the reasons mentioned above. If the applicant/petitioner filed petition along with an affidavit disclosing their residential address in the duly sworn affidavit, that itself is sufficient to continue the proceedings to provide immediate relief to the destitute wife/children. Accordingly, I pass the following order:

ORDER

- (i) The petition is allowed.
- (ii) Impugned order dated 05.11.2020 in Crl. Misc. No.145/2020 on the file of the Family Court, Dharwad, is set aside and the



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matter is remanded to the Family Court for fresh consideration after providing opportunity to the petitioners to prove their residential status, in the light of the observations made above.

(iii) In the event if such satisfactory proof is provided by the petitioners, the Family Court is requested to dispose of the petition at the earliest, within an outer limit of eight months from the date of receipt of this order.

(iv) The Family court is requested to issue Court notice to the respondent-husband and as the petitioner-wife and children are represented by her counsel on record, the petitioners shall appear before the Family Court on 28.07.2022.

**Sd/-
JUDGE**

SVH