

**THE HIGH COURT OF MADHYA PRADESH**  
**Criminal Revision No.3060/2021**  
**Nirman Sagar Vs. Smt. Monika Sagar Chaudhari and another**

**Gwalior, Dated:01/04/2022**

Shri Vijay Sundaram, Advocate for applicant.

Ms. Yashodhra Uniya, Advocate for respondents.

This revision under Sections 397, 401 of Cr.P.C. has been filed against the order dated 25/10/2021 passed by the Additional Judge to the Court of Principal Judge, Family Court, Gwalior in case No.234/2019 (new no.367/2021), by which the application filed by the applicant under Order VII Rule 11 CPC read with Section 126 of Cr.P.C. has been dismissed.

2. Since the controversy revolves in a very narrow compass, therefore, it is not necessary to mention the facts of the case in detail except that the applicant and respondent no.1 are the husband and wife, whereas respondent no.2 is the daughter of applicant. The respondents have filed an application under Section 125 of Cr.P.C. before the Court of Principal Judge, Family Court, Gwalior. The applicant filed an application under Order VII Rule 11 CPC read with Section 126 of Cr.P.C. on the ground that the marriage of the applicant with respondent no.1 was performed on 29/11/2019 at Bhopal and they had resided at Bhopal for the last time as husband and wife. The respondent no.1 is a working woman and is residing in Delhi alongwith respondent no.2 and with a solitary intention to give jurisdiction to the Family Court, Gwalior, she has given the address of her parental home, whereas she is working in Airport Authority of India and the respondent no.2 is also studying in Delhi. Thus, it was

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stated that as the Family Court, Gwalior has no jurisdiction to entertain application under Section 125 of Cr.P.C., therefore, the application filed by the respondents under Section 125 of Cr.P.C. is liable to be dismissed being without jurisdiction. It was also mentioned that in a petition under Section 9 of the Hindu Marriage Act the respondent no.1 had filed her reply, in which she had disclosed her address as “House No.159, DDA Flats, Pocket-2, Sector-9, Delhi” and new address “805, Aero View Heights Apartment, Flat No.3-B, Dwarka, Sector-22, Near Metro Station, Delhi” and she has also mentioned that she is working as ATC in Airport Authority of India. In her application filed under Section 24 of the Hindu Marriage Act she has also disclosed the fact that she is working in Indira Gandhi International Airport on the post of ATC and is residing in Delhi and accordingly, it was prayed that this Court has no jurisdiction to entertain the application filed under Section 125 of Cr.P.C.

3. The respondents filed their reply and stated that the respondent no.1 resided with the applicant till 2014 and thereafter, she came back to her parental home. The respondent no.1 is merely serving at Delhi and it is not her permanent address. The permanent address of the respondent no.1 is Gwalior. It was further stated that the respondent no.1 is already in job much prior to her marriage. Her first posting was in Calcutta in the year 2010 and from the year 2011 she is posted in Delhi and after she was deserted in the year 2014, she is

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residing in her parental home in Gwalior and attends her job at Delhi. Thus, the contention of the respondent no.1 was that her permanent address is at Gwalior and, therefore, the Family Court, Gwalior has a territorial jurisdiction to decide the application.

4. The Trial Court by the impugned order dated 25/10/2021 has rejected the application merely on the ground that the parental home of the respondent no.1 is at Gwalior and her permanent address is at Gwalior.

5. Challenging the order passed by the Court below, it is submitted by the counsel for the applicant that Section 126 of Cr.P.C. governs the jurisdiction of the Trial Court. It is further submitted that the respondent no.1 herself has admitted that she was already in job much prior to her marriage and from the year 2011 she is posted in Delhi.

6. *Per contra*, it is submitted by the counsel for the respondents that since the permanent address of the respondent no.1 is at Gwalior and she occasionally visits her parental home, therefore, the Family Court at Gwalior has a jurisdiction to entertain the application filed under Section 125 of Cr.P.C.

7. Heard learned counsel for the parties.

8. Section 126 of Cr.P.C. reads as under:-

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

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the

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case may be, with the mother of the illegitimate child.

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

9. Thus, the proceedings under Section 125 of Cr.P.C. may be taken against any person in any district where he or his wife resides or where he last resided with her wife or as the case may be with the mother of the illegitimate child. It is not the case of the respondent no.1 that she resided with the applicant for the last time in Gwalior. Her contention is that Gwalior is her permanent address as her parents are residing there and she occasionally visits her parents and, therefore, the Family Court, Gwalior has a jurisdiction to entertain the application filed under Section 125 of Cr.P.C. The stand taken by the respondent no.1 cannot be appreciated as the word “resides” cannot be equated with places where flying visits are made. It is not the case of respondent no.1 that at the time of filing of the application under Section 125 of Cr.P.C. she was posted in Gwalior and the

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Family Court, Gwalior would not lose jurisdiction merely on the ground that subsequently she was transferred, but the case of respondent no.1 is that from the year 2011 onwards she is posted in Delhi. Flying visits to a particular place with a solitary intention to confer jurisdiction would not satisfy the provisions of Section 126 (1) of Cr.P.C. The respondent no.1 has relied upon the **judgment dated 17/12/2021** passed by Delhi High Court in the case of **Asha Devi and others Vs. Muneshwar Singh @ Munna in Criminal Revision No.614/2018**. Paragraph 7 of the judgment passed in the case of **Asha Devi (supra)** reads as under:-

7. It is, further, submitted that a coordinate bench of this Court in the matter Sachin Gupta vs Rachana Gupta, CrI. Rev. P. 476/2018, decided on 21st January, 2019, had observed as under: -

“6. In terms of Section 126(1)(b), the respondent would be entitled to maintain a petition both at the place where the husband is residing as also at the place where she is residing. Section 126(1) does not contemplate a permanent place of residence. Even a place where the wife is for the time being residing would confer jurisdiction on such a court, where she is residing. However, residence temporarily acquired solely for conferring jurisdiction would not satisfy the requirements of Section 126(1).”

Hence, the Petitioner was entitled to proceed against the Respondent at the place where she was residing as well as where the Respondent was residing at the time of application, that is Delhi. Furthermore, it is submitted that the Respondent was arrested on 11th May, 2018 from Delhi, which is an affirmation of the fact that he was residing within the territorial borders of Delhi and is sufficient to invoke the legal jurisdiction of the concerned Courts here. Further, placing reliance on Bhaskar Lal Sharma vs Monica & Ors, (2014) 3 SCC 383, submitted that order of maintenance may be enforced against the concerned person within the

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jurisdiction of the Court that has passed maintenance order, even if he is living outside the country.

The Madras High Court in the case of **K. Mohan Vs. Balakanta Lakshmi** reported in **1983 Cr.L.J. 1316** has held as under:-

7. The Corpus Juris Secundum, Vol. LXXVII at page 285 states that the word 'reside' is employed in a wide variety of significations, that its meaning may differ according to the connection in which it is used, that the particular signification of the term in any given instance depends on the context and the purpose under consideration and that it should be interpreted in the light of the object or purpose of its use. It is further noted therein as follows:--

It has been said that the word, 'reside' has two distinct meanings, and that it may be employed in two senses, and in what is sometimes referred to as the strict legal, or technical sense, it means legal domicile as distinguished from mere residence or place of actual abode. In this sense the word 'reside' means legal residence; legal domicile, or the home of a person in contemplation of law, the place where a person is deemed in law to live, which may not always be the place of his actual dwelling and thus the term may mean something different from, being bodily present, and does not necessarily refer to the place of actual abode. When employed in this sense, the word, 'reside', includes not only physical presence in a place, but also the accompanying intent of choosing that place as a permanent residence.

8. Again, at page 288, it is noted thus:-

'Reside' has been held equivalent to, or synonymous with, 'abide', 'dwell', 'to have one's home', 'live', 'lodge', 'remain', 'residence', 'sojourn', and 'stay' 'Reside' is said to be usually classed as synonymous, with 'inhabit'; but not, in strictness, properly so.

9. In the Words and Phrases, Permanent Edn. Volume 37, at page 308 it is defined thus;

To 'reside' in ordinary acceptance, means to dwell, or to live...'Reside' means live, dwell, abide, sojourn, stay, remain, lodge.

10. The above lexicographical meaning of the word, therefore, takes in both the permanent dwelling and the

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temporary living in a place and it is therefore capable of different meanings including 'domicile' in the strictest and the most technical sense and a temporary residence in the liberal sense. Whatever 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 the particular statute..

10. Thus, it is clear that a casual stay or a flying visit to a particular place cannot be treated as a part of the word “reside”.

11. It is next contended by the counsel for the respondent no.1 that the respondent no.2 was earlier residing with her maternal parents at Gwalior, therefore, the application filed on her behalf is maintainable.

12. Considered the submissions made by the counsel for the respondent no.1.

13. The submission made by the counsel for respondent no.1 is just contrary to what it has been averred by her in paragraph no.1 of her application, which reads as under:-

“1.....विवाह के उपरांत आवेदिका क्रं.1 अनावेदक के आपसी दाम्पत्य संबंधों के परिणामस्वरूप एक पुत्री दक्षता चौधरी का जन्म हुआ जो वर्तमान में आवेदिका क्र.-1 के साथ निवासरत है।”

14. Thus, it is clear that it is the contention of the respondent no.1 that her daughter is residing with her. Admittedly, respondent no.2, daughter of respondent no.1, is prosecuting her studies in Delhi. Thus, it is clear that both the respondents no.1 and 2 are residing in Delhi where respondent no.1 is serving in Airport Authority of India and is posted as ATC. The respondent no.1 is serving in Delhi from

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the year 2011. The address which has been shown by them in the cause-title has been given with a solitary intention to give territorial jurisdiction to the Family Court, Gwalior and in fact the Family Court, Gwalior has no territorial jurisdiction to try the application in the light of Section 126 of Cr.P.C.

15. Accordingly, order dated 25/10/2021 passed by the Additional Judge to the Court of Principal Judge, Family Court, Gwalior in case No.234/2019 (new no.367/2021) is hereby set aside. The application filed by the respondents under Section 125 of Cr.P.C. before the Family Court, Gwalior is held to be without jurisdiction. However, liberty is granted to the respondents that if they so desire, they can file an application under Section 125 of Cr.P.C. before the Courts having jurisdiction in the light of Section 126 of Cr.P.C.

16. With aforesaid, the revision is **allowed**.

**(G.S. Ahluwalia)**  
**Judge**

**Arun\***