

Code of Criminal Procedure, 1973

Chapter 9 - Order for Maintenance of Wives, Children and Parents

(1) If any person having sufficient means neglects or refuses to maintain.-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate 1 [***] as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

2 [Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.";]

Explanation.-For the purposes of this Chapter.-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

3 ["(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.";]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance 4 [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the

date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [4](#) [allowance for the maintenance or the interim maintenance and expenses of proceeding , as the case may be] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

STATE AMENDMENTS

[5](#) Madhya Pradesh:

In sub-section (1) of section 125 of the Act for the words "five hundred rupees" the words "three thousand rupees" shall be substituted.

[6](#) Maharashtra:

In Section 125 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra:-

(a) in sub-section (1),-

(i) for the words "not exceeding five hundred rupees" the words "not exceeding fifteen hundred rupees" shall be substituted;

(ii) before the existing proviso, the following proviso shall be inserted, namely:-

Provided that, the Magistrate on an application or submission being made, supported by an affidavit by the person who has applied for the maintenance under this sub-section, for payment of interim maintenance, on being satisfied that, there is a prima facie ground for making such order, may direct the person against whom the application for maintenance has been made to pay a reasonable amount by way of interim maintenance to the applicant, pending the final disposal of the maintenance application:

Provided further that, such order for payment of interim maintenance may, in an appropriate case, also be made by the Magistrate ex parte, pending service of notice of the application, subject, however, to the condition that such an order shall be liable to be modified or even cancelled after the respondent is heard in the matter: Provided also that, subject to the ceiling laid down under this sub-section, the amount of interim maintenance shall, as far as practicable, be not less than thirty per cent of the monthly income of the respondent.";

(iii) in the existing proviso, for the words "Provided that" the words "Provided also that" shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:-

(2A) Notwithstanding anything otherwise contained in sub-sections (1) and (2), where an application is made by the wife under clause (a) of sub-section (1) for the maintenance allowance, the applicant may also seek relief that the order may be made for the payment of maintenance allowance in lump-sum in lieu of the payment of monthly maintenance allowance, and the Magistrate may, after taking into consideration all the circumstances obtaining in the case including the factors like the age,

physical condition, economic conditions and other liabilities and commitments of both the parties, pass an order that the respondent shall pay the maintenance allowance in lump-sum in lieu of the monthly maintenance allowance, covering a specified period, not exceeding five years at a time, or for such period which may exceed five years, as may be mutually agreed to, by the parties.";

(c) in sub-section (3),-

(i) after the words "so ordered" the words, brackets, figures and letter "either under sub-section (1) or sub-section (2A), as the case may be," shall be inserted;

(ii) after the words "each month's allowance" the words "or, as the case may be, the lump-sum allowance to be paid in lieu of the monthly allowance" shall be inserted.

7 Tripura:

In the Code of Criminal Procedure, 1973 in its application to the State of Tripura, in subsection (1) of section 125, for the words "five hundred rupees" the words "one thousand five hundred rupees" shall be substituted.

8 West Bengal:

In sub-section (1),-

(1) for the words "five hundred rupees" the words "one thousand and five hundred rupees" shall be substituted.

(2) after the existing proviso, following proviso shall be inserted, namely:-

"Provided further that where in any proceeding under this section it appears to the Magistrate that the wife referred to in clause (a) or the minor child referred to in clause (b) or the child (not being a married daughter) referred to in clause (c) or the father or the mother referred to in clause (d) is in need of immediate relief for her or its or his support and the necessary expenses of the proceeding, the Magistrate may, on the application of the wife or the minor child or the child (not being a married daughter) or the father or the mother, as the case may be, order the person against whom the allowance for maintenance is claimed, to pay to the petitioner, pending the conclusion of the proceeding, the expenses of the proceeding, and monthly during the proceeding such allowance as, having regard to the income of such person, it may seem to the Magistrate to be reasonable",

1. The Words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, section 2 (w.e.f. 24-9-2001).

2. Inserted by Act 50 of 2001, section 2 (w.e.f. 24-9-2001).

3. Substituted by Act 50 of 2001, section, for sub-section (2) (w.e.f. 24-9-2001).

4. Substituted by Act 50 of 2001, section 2, for "allowance" (w.e.f. 24-9-2001).

5. Vide M.P. (Act 10 of 1998), Section 3, (w.e.f. 29-5-1998).

6. Vide Maharashtra Act, 21 of 1999, Section 2, (w.e.f. 20-4-1999).

7. Vide Tripura Act, 9 of 1999, Section 2 (w.e.f. 9-4-1999).

8. Vide W.B. Act 25 of 1992 (w.e.f. 2-8-1993).

Section 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 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.

Section 127 - Alteration in allowance

1 ["(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly

allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.";

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that.-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to 2 [maintenance as interim maintenance, as the case may be] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a [3](#) [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to

be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as [4](#) [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.

STATE AMENDMENT

[5](#) Maharashtra:

In section 127 of the said Code,-

(a) in sub-section (1), in the proviso, for the words "five hundred rupees" the words "fifteen hundred rupees" shall be substituted;

(b) in sub-section (4),-

(i) for the words "monthly allowance", where they occur for the first time, the words "maintenance allowance" shall be substituted;

(ii) after the words "monthly allowance", where they occur for the second time, the words "or, as the case may be, the lump-sum allowance" shall be inserted.

[6](#) Tripura:

In the principal Act, in proviso to sub-section (1) of section 127, for the words "five hundred rupees", the words "one thousand five hundred rupees" shall be substituted.

[7](#) West Bengal:

In the proviso to sub-section (1) of section 127, for the words "five hundred rupees" the words "one thousand and five hundred rupees" shall be substituted.

1. Substituted by Act 50 of 2001, section 3, for sub-section (1) (w.e.f. 24-9-2001).

2. Substituted by Act 50 of 2001, section 3, for "maintenance" (w.e.f. 24-9-2001).

3. Substituted by Act 50 of 2001, section 3, for "monthly allowance has been ordered" (w.e.f. 24-9-2001).

4. Substituted by Act 50 of 2001, section 3 for "monthly allowance in pursuance of" (w.e.f. 24-9-2001).

5. Vide Maharashtra Act, 21 of 1999 Section 3 (w.e.f. 20-4-1999).

6. Vide Tripura Act 9 of 1999 Section 3 (w.e.f. 9-4-1999).

7. Vide W.B. Act 14 of 1995, Section 2 (w.e.f. 2-8-1995).

Section 128 - Enforcement of order of maintenance

A copy of the order of ¹[maintenance or interim maintenance and expenses of proceeding, as the case may be] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to ²[whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the ³[allowance or as the case may be expenses, due] .

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1. Substituted by Act 50 of 2001, sec. 4, for "maintenance" (w.e.f. 24.09.2001).
 2. Substituted by Act 50 of 2001, sec. 4, for "whom the allowance" (w.e.f. 24.09.2001).
 3. Substituted by Act 50 of 2001, sec. 4, for "allowance due" (w.e.f. 24-9-2001).
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