

**Ananth Gopal Pai Vs. Gopal Narayan Pai**

**Ananth Gopal Pai Vs. Gopal Narayan Pai**

**SooperKanoon Citation :** [sooperkanoon.com/371474](http://sooperkanoon.com/371474)

**Court :** Karnataka

**Decided On :** Apr-11-1984

**Reported in :** ILR1985KAR2607

**Judge :** N.D. Venkatesh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 126, 128 and 177

**Appeal No. :** Criminal Revn. Petn. No. 458 of 1983

**Appellant :** Ananth Gopal Pai

**Respondent :** Gopal Narayan Pai

**Advocate for Def. :** R.G. Devadhar, Adv.

**Advocate for Pet/Ap. :** S. Shekar Shetty, Adv.

**Judgement :**

ORDER

1. Gopal Narayana Pai who is the respondent herein is about 76 years. Petitioner Ananth Gopal Pai is his son.

2. Gopal Narayana Pai filed an application in the Court of the J.M.F.C. Kumta, D.K. under S. 125 of the Criminal P.C., 1973 for maintenance against Ananth Gopal Pai. Admittedly Gopal Narayana Pai resides in Kumpta Town and Ananth

Gopal Pai has been residing at Bangalore.

3. After notice to Ananth Gopal Pai he raised a preliminary objection therein stating that, that Court had no local jurisdiction to entertain that application and therefore it should be dismissed. The learned Magistrate having heard both sides on this aspect of the case by his order dt. 13-6-1983, has held, for the reasons stated by him that he has jurisdiction to entertain and proceed with the application.

4. Counsel for Ananth Gopal Pai taking me through the relevant provisions of the Code submitted that the finding of the trial Court on this question was not in accordance with law and therefore setting aside that order the application filed therein by Gopal Narayana Pai be dismissed.

5. Under S. 125 of the Code, a father, unable to maintain himself may file an application claiming maintenance from his son, if the son, having sufficient means, had neglected to maintain him or refuses to maintain him.

6. According to the petitioner since he is residing at Bangalore, if at all, as provided under S. 126 of the Code, his father could have filed such an application at a Court in Bangalore within whose jurisdiction he, the son, resides, but not at Kumpta.

7. Section 126 of the Code reads thus :

'126. Procedure. - (1) Proceedings under S. 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 in 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 application under S. 125 shall have power to make such order as to costs as may be just'.

7A. Section 126 has in its view only the husband and the wife or the mistress of the husband. The provision enables an application for maintenance to be filed in the district where he is or where he resides or in the district where he last resided with his wife or as the case may be with the mother of the illegitimate child. In so far as the wife is concerned, the section says that she can file an application in any Court of the district within which she resides. But, in so far as the father the mother or the children are concerned S. 126 is silent.

8. Is it intention of the legislature that the children or the father or the mother of the person concerned, who are not able to maintain themselves, if they want to claim maintenance should approach the Court within whose jurisdiction he (that person) is or resides

9. Suppose we agree with this construction of S. 126, what would be the result

10. We will assume that the aged father or the mother resides in some corner of the country and their son who is in service is at the other end - in a far off place. Besides being very aged or infirm they have also no means for their livelihood, but their son serving elsewhere is quite affluent. Suppose he is in Delhi and the parents are in the deep South, is it the intention of the legislature that these persons, parents, in order to claim maintenance from their son, shall have to apply to the Court at Delhi within whose jurisdiction he resides or he is

11. That may not be the intention of the legislature. While construing this provision. We shall have to keep in mind the beneficial nature of S. 125 and the other allied provisions of the Code.

12. In the circumstances of the case, it may not be inappropriate if we take note of the general principles governing such matters. Though an application filed under S. 125 is not a complaint, the principles underlying in S. 177 of the Code may be kept in view in a matter like this. S. 177 of the Code says every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. On the same analogy let us examine this question.

13. Here is an aged father residing at Kumpta town. He says that he is unable to maintain himself and that his son, though has sufficient means, has not been providing any help to him and therefore the Court may enquire into this claim and pass appropriate orders. The cause of action for him has arisen, as can be made out from this petition, at the place where he resides. He can, in the circumstance, approach the Court within whose jurisdiction he resides, seeking the relief he claims. That Court, in my view, would have jurisdiction to entertain that claim and deal with it on merits. The order that Court may make would be enforceable against the son wherever he is and that is clear from S. 128 of the Code. It says that 'such an 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 allowance due.' Taking any other view of the matter would make these beneficial provisions absolutely futile and meaningless. As observed by Vepa P. Sarathi at pages 140 and 141 of his 'Interpretation of Statutes', 2nd Edition a statute 'should be construed in a manner to carry out the intention of the legislature 'and' even a modification or contradiction of the language of the legislature is permissible in order to square with the intention'.

14. Thus for the reasons stated by me above, in the circumstances of the case, the application filed by the father in the Court of the J.M.F.C., Kumpta is maintainable.

15. Therefore, for the reasons stated above, the petition is dismissed.

16. Petition dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**