

Before Suvir Sehgal, J.

**HARENDER BALHARA (MINOR) THROUGH HIS MOTHER
AND NATURAL GUARDIAN, SMT. RITU SINGH—Petitioner**

versus

PRADEEP KUMAR—Respondent

CRR (F) No.212 of 2021

January 10, 2022

Code of Criminal Procedure, 1973—Ss. 125 and 126—Jurisdiction— Section 126 requires that proceedings under Section 125 of the Code may be taken against any person in any District where he or his wife resides—Section does not require permanent residence, even temporary residence, so long as it is not casual, is sufficient to confer jurisdiction on the Court.

Held that, there is no dispute about the fact that the respondent is residing at Sonapat. It has been held by the Supreme Court in *Mst. Jagir Kaur versus Jaswant Singh AIR 1963 SC 1521* that the crucial words of the sub-Section are, “resides”, “is” and “where he last resided with his wife”. The jurisdiction is wide and the provision gives three alternative forums to enable the discarded wife or a helpless child to get the much needed and urgent relief in any one or other of the three forums convenient to them. It has been further held that the proceedings under the provision are in the nature of civil proceedings and the remedy is summary, and the words should be liberally construed without doing any violence to the language. Consequently, this Court is of the opinion that the petition instituted by the minor petitioner at Sonapat is maintainable.

(Para 8)

S.S. Mor, Advocate
for the petitioner.

Amar Pratap Singh, Advocate
for the respondent.

SUVIR SEHGAL, J.

(1) Heard through video conferencing.

(2) Vide the instant petition filed under Section 401 of the Code of Criminal Procedure, 1973, (hereinafter referred to as “the Code”),

the minor petitioner has approached this Court through his mother and natural guardian, Smt. Ritu Singh, seeking setting aside of impugned order dated 07.04.2021 passed in case No.214-2018 by the Principal Judge, Family Court, Sonapat, whereby petition filed under Section 125 of the Code has been dismissed as being not maintainable for want of territorial jurisdiction with liberty to the petitioner to file the petition in the Court of proper jurisdiction as per law. Another prayer has been made that in case, this Court comes to the conclusion that the territorial jurisdiction is with the Courts at Ambala, where the minor petitioner is temporarily residing with his mother, then the petition be directed to be sent to the competent Court of Ambala District.

(3) Facts, in brief, leading to the filing of the present petition are that Ritu Singh, mother of the minor petitioner was married to the respondent on 25.01.2015 at Sonapat and started residing with the respondent at his native village in District Sonapat. The mother of the petitioner was harassed, treated with cruelty and physically assaulted by the respondent and his family relations, who were demanding a luxury car and Rs.20 lacs in dowry. She was turned out of the matrimonial home in March, 2015 and was rehabilitated after a sum of Rs.1 lac was given by her brother. Petitioner was born on 27.12.2015 at a maternity home at Sonapat, however, soon thereafter on 31.12.2015, the minor petitioner and his mother were turned out of their home and all the 'streedhan' and other articles of the mother of the petitioner were forcibly taken by the respondent and his family members. Despite repeated attempts by the relatives of the mother of the petitioner, she was not taken back by the respondent and she submitted complaints before the police regarding the harassment and misappropriation of dowry articles. Instant petition seeking maintenance on behalf of the minor petitioner came to be instituted on 31.05.2018, Annexure P-1, claiming a monthly allowance of Rs.25,000/-; besides, litigation expenses of Rs.11000/-. It has been averred that the respondent is a Law Graduate, who is enrolled with a District Bar Association and has substantial earning from property dealing business besides owning 06 acres of agricultural land. The petition was contested by the respondent by filing a reply dated 15.07.2019, Annexure P-2, wherein the material allegations regarding harassment and cruelty have been denied. It has been submitted that the mother of the petitioner is working as a Primary Teacher with Kendriya Vidayala and drawing a monthly salary of Rs.56,649/- and she is in a financial position to maintain the minor. Respondent has further submitted that he had filed a petition on 17.11.2017 under Section 9 of the Hindu Marriage Act,

1955 for restitution of conjugal rights but instead of putting in appearance before the Court, the mother of the petitioner invoked Section 125 of the Code. Still further, it has been submitted that a settlement was arrived at between the parties before the District Legal Services Authority, Sonapat, but the mother of the petitioner failed to comply with the terms of the settlement and FIRs have been registered both by the respondent as well as the mother of the petitioner against each other. Respondent in his reply has admitted the fact that he is a law graduate and is practicing at Sonapat and has a monthly income of Rs.10-15 thousand per month. Reliance has been placed on the income tax return for assessment year 2019-2020 to submit that the petitioner has filed a return of Rs.2,15,000/-.

(4) Counsel for the petitioner has urged that at the time of the institution of the petition, the minor petitioner was residing with the maternal grandparents at Sonapat and this fact has been admitted by the respondent in his reply. Still further, it has been contended that the respondent never objected to the entertainment of the petition by the Sonapat Court. Opposing the petition, it has been submitted by the counsel for the respondent that the respondent had filed a petition under the Guardians and Wards Act, 1890 seeking custody of the child at Sonapat, however, the same was withdrawn on 07.04.2021, as the mother of the petitioner in the reply had submitted that the minor is no longer residing within the territorial jurisdiction of the Courts at Sonapat and a fresh petition has been instituted before the Courts at Ambala. It has been urged that as the minor petitioner no longer resides within the territorial jurisdiction of the Courts at Sonapat, therefore, there is no infirmity in the impugned order.

(5) I have heard the counsel for the parties and examined the paper book with their able assistance.

(6) The sole question to be determined in the present revision petition is as to whether the petition filed by the minor petitioner is maintainable before the Courts at Sonapat. The admitted position is that the marriage of the mother of the petitioner as well as the respondent took place and they resided together at Sonapat. The petitioner was also born in the territorial jurisdiction of Sonapat and respondent, who is in a legal professional, is staying as well as practicing at District Courts at Sonapat. The mere fact that the petitioner is no longer residing at Sonapat, does not oust the territorial jurisdiction of the Sonapat Court to try and entertain the petition.

(7) While passing the impugned order, the Family Court has

failed to appreciate the statutory provision as laid down in Section 126 (1) of the Code, which is reproduced as under:-

“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. ”

(8) There is no dispute about the fact that the respondent is residing at Sonapat. It has been held by the Supreme Court in *Mst. Jagir Kaur* versus *Jaswant Singh*¹ that the crucial words of the sub-section are, “resides”, “is” and “where he last resided with his wife”. The jurisdiction is wide and the provision gives three alternative forums to enable the discarded wife or a helpless child to get the much needed and urgent relief in any one or other of the three forums convenient to them. It has been further held that the proceedings under the provision are in the nature of civil proceedings and the remedy is summary, and the words should be liberally construed without doing any violence to the language. Consequently, this Court is of the opinion that the petition instituted by the minor petitioner at Sonapat is maintainable.

(9) Coming to the argument raised by the counsel for the respondent that once the minor petitioner is no longer residing at Sonapat, the Court is divested of the jurisdiction to entertain the petition. This argument only deserves to be noticed and rejected. As is seen above, the statutory provision has given three forums to the aggrieved persons and one of the forum is the place where the respondent resides, which admittedly is Sonapat. Subsequent change in residence of the minor petitioner will not make any difference. Insofar as the petition filed by the respondent under the Guardians and Wards Act, 1890, is concerned, the requirement of jurisdiction as laid down in Section 9 thereof is that the application “shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides”. In the reply, Annexure R-2, filed by the mother of the petitioner, she has specifically taken the stand that after her transfer, the minor is studying in a school at Ambala, where she is residing and, therefore, the Courts at Sonapat do not have the territorial jurisdiction. In any case, the guardianship petition instituted by the respondent at

¹ AIR 1963 SC 1521

Sonepat was withdrawn by him, with liberty to approach the Competent Court at Ambala and the said remedy has already been availed of by the respondent.

(10) In view of the above discussion, this Court is of the view that the impugned order passed by the Family Court, Sonapat being erroneous, cannot be sustained.

(11) Therefore, revision petition is allowed, impugned order is set aside and the matter is remitted to the Family Court, Sonapat to decide the same in accordance with law. The respondent being the father of the minor petitioner, is liable to pay litigation expenses, which are assessed at Rs.15,000/- to the respondent on 15.02.2022, the date on which the parties are directed to appear before the trial court.

Rajiv Vij