

**(1991) 07 GAU CK 0013**  
**In the Gauhati High Court**  
**Case No : Criminal Revision No. 122 of 1991**

Pradip Sengupta

APPELLANT

Vs

Ratna Sengupta

RESPONDENT

**Date of Decision :** 18-07-1991

**Acts Referred:**

Criminal Procedure Code, 1973 — Section 125  
Criminal Procedure Code, 1973 (CrPC) — Section 125

**Citation :** (1992) 1 GLR 199

**Hon'ble Judges :** S.K.Homchaudhuri, J

**Bench :** Single Bench

**Advocate :** N.Choudhury, S.Kakati, Advocates appearing for Parties

## Judgement

S.K. Homchaudhuri, J.—The petitioner and the opposite party were married on 9.6.83. In 1987 the opposite party (wife) filed an application u/s. 125 Cr. P.C. in the court of the learned Asstt. to Deputy Commissioner, Dimapur for ordering payment of maintenance to her by the petitioner (husband). The application was registered as Misc. Case No. 70/87, u/s. 125 Cr. P.C. The petitioner is an employee of N. F. Railway and working as Diesel Assistant. The petitioner (husband) on receipt of notice challenged the territorial jurisdiction of the said learned Asstt to Deputy Commissioner, Dimapur. The learned Asstt. to Deputy Commissioner after hearing the parties by the order dated. 4.4.88, passed in Misc Case No. 70/87 u/s 125 Cr. P.C. held that this court has jurisdiction to adjudicate an application u/s 125 Cr. P.C. It is not disputed that the Asstt to Deputy Commissioner, Dimapur is also the Magistrate 1st Class as contemplated under the provisions of Cr. P.C. The petitioner impugned the said order in Criminal Revision No. 289/88 which was dismissed on 17.11.89 by this Court on the ground that the revision petition was not maintainable since against the impugned order appeal lay before the court of Addl. Deputy Commissioner (3), Dimapur.

2. The petitioner thereafter impugned the order dated 4.4.88 passed by the

learned Asstt. to Deputy Commissioner in Criminal Appeal No. 9/89 in the court of learned Addl. Deputy Commissioner (J), Dimapur. The learned Addl. Deputy Commissioner after hearing both the parties, dismissed the appeal by an order dated 11690.

3. Thereafter, the learned Asstt. to Deputy Commissioner passed the impugned order dated 17.12.90 ordering that the petitioner shall pay maintenance to the opposite party (wife) at the rate of Rs. 500/p.m with effect from 17.8 98 until further order. The petitioner has challenged the inherent jurisdiction of the court of Asstt to Deputy Commissioner to an application u/s 125 Cr. P C. in this petition.

4. I have heard Mr. S Kataki, learned counsel for the petitioner and Mr. N. C. Choudhury, learned counsel for the opposite party. Mr. Kataki submits that section 1 of the Code of Criminal Procedure has excluded the application of Code of Criminal Procedure, 1973, in the State of Nagaland save and except, the provisions relating to Chapter VIII, X and XI of the Code. The Government of Nagaland has not issued any notification making the provision of Chapter IX of Cr. P.C. 1973 applicable in Nagaland and/or any part thereof. As such provision of Section 125 Cr. P.C. has no application in Nagaland. Provision of section 125 Cr. P.C. is a substantial one and not procedural and that following the spirit of Cr. P.C. as provided under Rule 22 of the Rules for the Administration of Justice and Police in Nagaland, an application u/s. 125 Cr. P.C. cannot be entertained. Mr. Kataki also submits that the court of Asstt. to Deputy Commissioner, Dimapur has no jurisdiction to entertain and adjudicate an application u/s. 125 Cr. P.C. In support of this contention reliance has been placed in the decision of this court in the case of Jamadar Poremeshwardin Singhpetitioner vs. Bidya Devi reported in 1962 (VolI) Criminal Law Journal132.

5. Mr. N. Choudhury learned counsel of the opposite party submits that the provision of section 125 Cr.P.C. has been inserted in the Code as a measure of Social Justice to protect the women, children, and old parents who are unable to maintain themselves and the right to get maintenance as per provision of Section 125 Cr.P.C. cannot be frustrated by making narrow technical interpretation of the applicability of the provision. For advancement of Social Justice, the applicability U/s. 125 Cr.P.C. and jurisdiction of court should be liberally construed. Learned Counsel has placed reliance in the decision of the Hon"ble Supreme Court in the case of Captain Ramesh Chander vs. Veena Kaushal (1978 S.C.1807) In para 9 of the Hon"ble Supreme Court held :

This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15 (3) reinforced by Art. 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children, must inform interpretation if it has to have social relevance so viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause of the derelicts.

6. The learned counsel for the opposite party submits that as per provision of Sub Rule 2 of Rule 16 of the Rules for the Administration of Justice and Police in Nagaland, (hereinafter mentioned as the Rules), the Asstt. to Deputy Commissioner is also a Magistrate, 1st Class as contemplated under Cr.P.C. and that following the spirit of provisions of Cr.P C. as enjoined under Rule 22 of the Rules, the Magistrate, 1st Class in Nagaland is quite competent to entertain and adjudicate an application U/s. 125 Cr.P.C. The learned counsel for the opposite party has placed reliance in the decision of the Supreme Court in the case of Nagaland vs. Ratan Singh reported in A.I.R. 1967 SC 212. The scope of Rule 22 of the Rules was discussed. In Para 30 of the said case the Apex Court amongst others held :

"Throughout the past century the Criminal procedure Code has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal procedure Code has been asked to be applied so that justice may not fail because of some technicality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In this area it is considered necessary that discretion should have greater play than technical rules and the provision that the spirit of the Code should apply is a law conveyed in the best interest of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities in our opinion, leads to the advancement of the cause of justice in these backward tracts. On the other hand, the imposition of the Code of Criminal Procedure would retard justice, as indeed the GovernorsGeneral, the Governor and the other heads of local Government have always thought. We think, therefore, that Art. 21 does not render the Rules of 1937 ineffective.

7. The learned Counsel for the opposite party has also placed reliance on a decision of this court in the case of K. K. Dey vs. Union of Territory of Arunachal Pradesh, reported in (1983) 1 GLR P. 23. In the said case the question arose as to whether the petition U/s. 438 Cr. P. C. was maintainable in view of the fact that the applicability of the provision of Chapter XXXIII of the Cr. P. C. 1973 was excluded in the Union Territory of Arunachal Pradesh by section 1 of the Code. This court held that although the provisions relating Chapter XXXIII of Cr. .C. was not extended in Arunachal Pradesh application u/s. 430 Cr. P. C. was maintainable. In para 6 of the said case, this court held :

"The provision of anticipatory bail in sec. 438 of the Code has to be regarded as one of the basic principles of the Code. And further it is procedural provision, as pointed out in Gurbaksh Singh. For these twin reasons, its provisions have to be applied by all the courts mentioned in section 32 of the Regulation".

8. I have considered the submissions made on behalf of the petitioner as well as on behalf of the opposite party and have perused the materials on records. I find

sufficient force in the submissions made on behalf of the opposite party. Advancement of social justice cannot be frustrated in making narrow interpretation of scope of applicability of the provision U/s. 125 Cr. P. C. The provision of Chapter IX Cr. P. C. 1973 may not, as such, be applicable in Nagaland, or in Tribal Areas, but the spirit of provision of Chapter IX is very much applicable and as such a Magistrate of 1st Class in Nagaland has jurisdiction to entertain and adjudicate an application U/s. 125 Cr. P. C. The decision of this court in the case of Jamadar Poremeshwardir Singh, supra a has no application on the facts of the present case. In that case this court found that the court of Asstt. to Deputy Commissioner Garo Hills did not come within the meaning of any Magistrate as contemplated under Cr. P. C.