**LEGAL PROCESS FOR MAINTENANCE OF WIFE BY HUSBAND**

Legal provisions regarding Procedure for Maintenance are mentioned under section 126 of the Code of Criminal Procedure, 1973. The proceedings under Section 125 are in the nature of civil proceedings, the remedy is a summarily one and the person seeking the remedy is ordinarily a helpless person. So the words in Section 126(1) should be liberally construed.

**(1) Application to Magistrate**

An application for maintenance under Section 125 of the Code may be filed in the court of first class Magistrate 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.

No period of limitation has been prescribed for filing an application for maintenance.

**(2) Summons to the Respondent**

The magistrate will then summon the person against whom the maintenance is claimed in order for the person to make appearance and contest the claim of maintenance.

**(3) Evidence and Trial**

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-case. However, if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte.

**(4) Interim Maintenance**

During the pendency of the suit the magistrate may order for payment of monthly allowance to the wife and also the expenses of rhe proceedings which the magistrate considers to be reasonable

**(5) Order of maintenance**

After the trial, the magistrate on perusing the evidence and witnesses may make an order for the husband to make a monthly allowance for the maintenance of his wife at such a monthly rate as the magistrate seems to be necessary.

**(6) Modification of maintenance**

Sec. 127 empowers the Magistrate to alter or modify the order of the maintenance on of (i) a change in the circumstances of the party receiving the maintenance, or (ii) any decision of competent civil court. The party entitled to alteration of the order, can always move to the Magistrate whenever there is a change of circumstances.

**(7) Enforcement of maintenance**

Once an order of maintenance has been passed, the order will be provided to the wife and this can be enforced by a magistrate in the place where the husband against whom maintenance is claimed resides, failing which, a warrant will be issued against him.

The Supreme Court in Kamala and ors. v. M.R. Mohan Kumar[[1]](#footnote-0) has reiterated the settled principle of law that unlike other matrimonial proceedings, a strict proof of marriage is not essential in claim of maintenance under Section 125 of CrPC and that when the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance under Section 125 CrPC.

In Chanmuniya Vs. Virender Kumar Singh Kushwaha[[2]](#footnote-1), Supreme Court said that the court should not insist to produce strict proof of marriage.

Construing the term 'wife' broad and expansive interpretation should be given to term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, strict proof of marriage should not be a pre-condition for maintenance.

In Chaturbhuj Vs. Sita Bai[[3]](#footnote-2), Supreme Court said that Where the husband had placed material to show that the wife was earning some income, it has been held by the Hon'ble Supreme Court that it is not sufficient to rule out the application of Sec. 125 CrPC. It has to be established that with the amount she earned, the wife was able to maintain herself.

1. CRIMINAL APPEAL NOS. 2368-2369 OF 2009 [↑](#footnote-ref-0)
2. JT 2010 (11) SC 132 [↑](#footnote-ref-1)
3. AIR 2008 SC 530 [↑](#footnote-ref-2)