**MAINTENANCE OF PARENTS BY CHILDREN**

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 the son is, or

b. Where the son or his wife resides, or

c. Where the son 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 son/daughter 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 son/daughter against whom an order for payment of maintenance is proposed to be made, or, when his/her 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 son/daughter 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 parents and also the expenses of the 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 son/daughter to make a monthly allowance for the maintenance of his/her parents 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 child and this can be enforced by a magistrate in the place where the son/daughter against whom maintenance is claimed resides, failing which a warrant will be issued against him/her.

In Vijaya Manohar Arbat v. Kashirao Rajaram Sawai[[1]](#footnote-0) the Supreme Court held that along with a son, Section 125 CrPC imposes liability even on daughter whether married or unmarried, having sufficient means to pay maintenance to her parents who are unable to maintain themselves.

In Kirtikant D. Vadodaria v. State of Gujarat[[2]](#footnote-1), the Supreme Court has held that a childless stepmother may claim maintenance from her stepson provided she is a widow or her husband, if living, is incapable of supporting and maintaining her,

1. (1987) 2 SCC 278 [↑](#footnote-ref-0)
2. (1996) 4 SCC 479. [↑](#footnote-ref-1)