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Section 125 in The Code Of Criminal Procedure, 1973
 The Code Of Criminal Procedure, 1973
 Rajathi vs C. Ganesan on 22 July, 1999
 Article 15(3) in The Constitution Of India 1949
 Section 494 in The Indian Penal Code

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Sindhu P.A vs Viji P.K (Vijidharan) on 25 November, 2008

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Kerala High Court

Muraleedharan vs Vijayalakshmi on 18 July, 2006

Equivalent citations: II (2006) DMC 613, 2006 (3) KLT 635

Author: R Basant

Bench: R Basant

ORDER R. Basant, J.

1. How unable should a wife be to maintain herself in order to entitle her to claim maintenance under [Section 125](#) CrPC. This is the crucial question that arises for consideration in this revision petition.

2. The petitioner herein challenges an order passed under [Section 125](#) CrPC directing him to pay maintenance to his wife/claimant @ Rs. 2,000/- per mensem. Marriage is admitted. Separate residence of the spouses consequent to strain in matrimony is not disputed. That the petitioner/husband is a business man having spent about two decades working abroad is also not seriously disputed, though there is a contention that his present business is not lucrative. The claimant/wife, aged about 39 years when she staked the claim is educationally qualified. She is a post graduate holding master's degree in arts. She is professionally qualified and is a law graduate. When they lived in matrimony, the claimant/wife was a house wife and had not pursued any career. She did not have the B.Ed. degree which she asserted was necessary to enable her to secure employment as a teacher now. Though she admittedly held the professional qualification to practise as a lawyer, she had admittedly not enrolled herself and had never practised as a lawyer. She held out the reason that she is not conversant in the vernacular and that is why she did not choose to pursue a career in law. After the spouses started separate residence, admittedly she had worked in some schools as a teacher. It is her case that now, on account of the insistence on B.Ed. Degree for working as a teacher, she is not able to secure any such employment.

3. Before the learned Magistrate, the claimant/wife examined herself as PW.1. She was subjected to cross examination - to be precise on her status as a woman "unable to maintain herself". The petitioner/husband chose not to take the witness stand.

4. The learned Magistrate on an anxious consideration of all the relevant inputs came to the conclusion that the claimant/wife is unable to maintain herself and is consequently entitled to claim maintenance from the petitioner, her husband, who it was held has sufficient means.

5. Called upon to explain the nature of challenge, which the petitioner wants to mount against the impugned direction, the learned Counsel for the petitioner has trained all his guns on the finding that the claimant/wife is unable to maintain herself. The learned Counsel for the petitioner contends that a woman like the claimant/wife who is a post graduate and professionally qualified, who sits idle and does not engage herself in any income earning ventures cannot be held to be a woman unable to maintain herself, who alone is entitled to the compassion of law under [Section 125](#) CrPC.

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[sec.125](#)
[section 125](#)
[unable to maintain herself](#)
[125 cr.p.c.](#)
[s.125,cr.p.c.](#)
[s.125 of criminal procedure code](#)
[s.125 crpc](#)
[crpc 125](#)
[criminal procedure code 125](#)
[125 criminal procedure](#)
[section 125 cr.p.c](#)
[sec.125 of cr.p.c](#)
[section 125 crpc](#)
[sec.125 of crpc](#)
[section 125 of the criminal procedure code](#)
[section 125 crpc section](#)
[sec.125 of criminal procedure code](#)
[section 125 criminal procedure](#)
[second marriage](#)
[sufficient means](#)

6. The learned Counsel for the respondent claimant/wife on the other hand contends that while interpreting the provision of a welfare legislation like [125 CrPC](#), the Court cannot afford to be unrealistic and rigid. The social ethos, the practices prevailing in the community and the concern and compassion in the Constitution for the less privileged female half of humanity in India cannot be ignored or lost sight of. Counsel for the claimant/wife first of all wants this Court to be reminded of the passages in [Bai Tahira v. AH Hussain Fidaalli Chothia](#) appear to me to be crucial where Justice Krishna Iyer has spoken about the need for commitment of the law in favour of the under privileged for whose benefit an ameliorative provision like [Section 125 CrPC](#). has been enacted. I extract the same below:

Para. 1: "In this appeal, by special leave, we are called upon to interpret a benign provision enacted to ameliorate the economic condition of neglected wives and discarded divorcees, namely, [Section 125, CrPC](#). Welfare laws must be so read as to be effective delivery systems of the salutary objects sought to be served by the Legislature and when the beneficiaries are the weaker sections, like destitute women, the spirit of [Article 15\(3\)](#) of the Constitution must be light the meaning of the section. The Constitution is a pervasive omnipresence brooding over the meaning and transforming the values of every measure. So [Section 125](#) and sister clauses must receive a compassionate expansion of sense that the words used permit.

Para. 7: "The meaning of meanings is derived from values in a given society and its legal system. [Article 15\(3\)](#) has compelling, compassionate relevance in the context of [Section 125](#) and the benefit of doubt, if any, in statutory interpretation belongs to the ill-used wife and the derelict divorcee. This social perspective granted, the resolution of all the disputes projected is easy. Surely, Parliament, in keeping with [Article 15\(3\)](#) and deliberate by design, made a special provision to help women in distress cast away by divorce. Protection against moral and material abandonment manifest in [Article 39](#) is part of social and economic justice, specificated in Art. 38, fulfillment of which is fundamental to the governance of the country ([Article 37](#)). From this coign of vantage we must view the printed text of the particular Code.

7. The learned Counsel for the petitioner-husband contends that the inability to maintain herself contemplated in [Section 125](#) must be understood fairly and realistically. Counsel relies on the meaning of the word 'unable' and 'able' in the dictionaries and impresses upon the Court that a person can be said to be able if he has sufficient power, skill or resources to accomplish a job. The job in the instant case is to maintain herself. Therefore a person with such educational qualifications as the claimant/wife admittedly possesses must be held to be having sufficient powers, skill or resources to accomplish the task of maintaining herself.

8. The learned Counsel for the petitioner then submits that the interpretation of law has to be just and fair. When a husband without employment is expected by law to put to use his able body to work and earn livelihood to support himself and his family, it would be irrational and unjust not to expect such efforts on the part of a woman. Able body itself may not be sufficient to bring a woman to the category of persons "able to maintain themselves". But certainly the superior qualifications and training which the claimant has must take her out of the sweep of persons who are unable to maintain themselves.

9. There can be no doubt that when [the Code](#) was amended in 1973, it was at least further clarified unambiguously that a wife claiming maintenance under [Section 125](#) must be a person "unable to maintain herself. If she has a settled employment or properties which fetch her an income sufficient to maintain herself, certainly she cannot be said to be a person unable to maintain herself. But the mere possibility or potentiality which another person belonging to the male species having similar qualification may have, may not according to me be sufficient to take such a woman out of the category of persons unable to maintenance themselves. The law cannot be unjustly equal. The insistence that the same interpretation must apply to men and women when considering whether the man is having sufficient means and the woman is unable to maintain herself would be to do injustice to the language of law and realities of life. Justice through law cannot be achieved by reducing interpretation to a procrustean venture. Compassion and concern for the weak and less fortunate underlying [Section 125 CrPC](#) must be imbibed by the interpreter to give content and life to that statutory provision.

The failure to do so, will be disservice to the idealism which prompted the legislature to enact a provision like [Section 125](#). Protective discrimination in law-making and law-interpretation is not anathema to law. While considering the contentions raised by the learned Counsel for the petitioner, this fundamental principle in interpretation cannot be lost sight of.

10.1 am not without binding authority to come to this conclusion. The very same expression unable to maintain herself as it applies to a woman came up for consideration of the Supreme Court in [Rajathi v. C. Ganesan](#) . The situation in which the matter came up for consideration may not be identical in all respects, but certainly the court was called upon to consider how the expression "unable to maintain herself must be considered when it was to interpret [Section 125](#) CrPC. I extract para. 7 of the decision in [Rajathi v. C. Ganesan](#) , which clearly conveys the attitude with which the question deserves to be considered. It reads:

In the present case wife alleged that her husband had contracted a second marriage on January 4, 1990. She filed a complaint, for an offence under [Section 494](#) of the Indian Penal Code. It is stated that the complaint was dismissed and husband was acquitted. High Court took this circumstance against the wife and adversely commented on her refusal to live with her husband. High Court, it would appear, lost sight of the fact how it would be difficult for the wife to prove the second marriage. this Court has held that to prove the second marriage as a fact essential ceremonies constituting it must be proved and if second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community conviction under [Section 494](#) IPC ought not to be made. The fact, however, remains in the present case that the husband is living with another woman. Proviso to Sub-section(3) would squarely apply and justify refusal of the wife to live with her husband. There can be however, other grounds for the wife to refuse to live with her husband, eg., if she is subjected to cruelty by him. It was a case where the husband neglected or refused to maintain his wife. High Court did not consider the question if husband was having sufficient means. It rather unnecessarily put the burden on the wife to prove that she was unable to maintain herself. The words "unable to maintain herself would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. [Section 125](#) is enacted on the premise that it is obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them. High Court also observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise.

(emphasis supplied)

11. In that case, the court was called upon to decide whether the successful venture made by a destitute woman to keep her body and soul together by engaging herself in some activities till she secured an order under [Section 125](#) CrPC is sufficient to take her out of the category of persons unable to maintain themselves. The question was answered in the negative. Two clear principles appear to have been laid down. Statement of the wife that she is unable to maintain herself would be enough to shift the burden to the husband. It was further held that the "ability to maintain herself of the wife must be tested on the basis of the facts and circumstances prevailing while the spouses were living together in matrimony. Thereafter even if the wife had kept body and soul together by engaging herself in some activities, that, it is held unambiguously will not take her out of the category of persons "unable to maintain themselves".

12. Coming back to the facts of the case, the lady claimant is certainly educationally qualified. But the plight and the situation of even the educated half of the Indian polity show clearly that the qualification by itself cannot be held to be synonymous with ability to maintain themselves. Many a qualified housewife after marriage relegates herself to the kitchen and the home front looking after children. She opts herself to be or is compelled to be satisfied with the role of a home maker. After playing that role for sometime she renders herself unable to do anything more than that.

The expression able to maintain must receive a dynamic and realistic interpretation in the light of the indisputable plight of the Indian woman. The mere fact that she has qualification is not sufficient ipso facto to conclude that she is in a position to maintain herself. More so, in a competitive profession like the profession of law-as the lady had never enrolled herself as a practitioner nor embarked on any activity connected with law for a long period of time after her marriage till the separate living started. The qualification that she possesses is such that it cannot immediately be converted into work and earnings. Possession of such qualification by itself cannot be reckoned as synonymous with ability to maintain herself. So far as the postgraduate qualification in Arts is concerned, she had explained that she was able to get some work earlier. But those opportunities were not available to her now as institutions were insisting on B.Ed, qualification for teachers. There is nothing tangible to show that she was actually engaging herself in any teaching activities or professional activity as a lawyer at the time when the claim was made or before spouses started separate residence. In these circumstances, the conclusion appears to me to be inevitable that the mere fact that after separation on some occasions she had worked as a teacher in some schools is insufficient to take her out of the category of persons unable to maintain themselves.

13. Of course, the dictum in [Rajathi v. C. Ganesan](#) will also have to be understood reasonably and fairly. If a qualified woman is actually able to engage herself in some stable and settled employment after the spouses started separate residence, it may not be fair or correct to say that such subsequent stable employment and income must be ignored solely for the reason that she had taken up such employment only after the spouses separated and while in matrimony she was not engaging herself in any income earning activities. It is not necessary to advert in detail to such possibilities in view of the facts of this case, where it is very clear that either before the spouses separated or immediately prior to the date of filing of the petition or thereafter the claimant wife was not actually engaging herself in any income earning activities. The evidence clearly shows that it was not an adamant refusal on the part of the claimant/wife to engage herself in any income earning activity to maintain herself. It was clearly a case of her inability to secure any such income earning activities and income to be able to maintain herself. The conclusion in these circumstances appears to me to be inevitable that the impugned order does not warrant any interference by invocation of the revisional jurisdiction of superintendence and correction.

14. The quantum of maintenance fixed is also found to be absolutely reasonable and modest considering the proved means of the petitioner and the needs of the claimant. The challenge fails and the Revision Petition is accordingly, dismissed.