

MAINTENANCE UNDER CODE OF CRIMINAL PROCEDURE

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The term maintenance literally means Money required or spends to provide for the needs of a person or family or in other words Maintenance means food, clothing and lodging. It would include need of something which is required to stay alive, supply of necessities and conveniences, aid, support which a person who is bound to extend to another person. Maintenance also includes the medical expenses as well as other expenses which a person needs to carry on a normal life so that a person can lead a normal life which he/she is used to.

Maintenance which is given to a person varies according to the status and position of a person who is providing maintenance. The maintenance also covers the minimum amount for education, progress and development of a child.

Maintenance under Code of Criminal Procedure is provided under Chapter IX from Section 125 to Section 128 wherein;

Section 125 provides the Order for maintenance of wives, children and parents. The Magistrate of the First class may give order to the person who having sufficient means neglects;

- His wife who is not able to maintain or earn for herself;
- Illegitimate or legitimate minor child of that person, and that child is either married or not is unable to maintain himself/herself;

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- Illegitimate or legitimate child of his who is now a major but because of some physical or mental inability is not able to maintain itself;
- His father or mother who is unable to maintain itself.

May by analysing the proof or evidence of such neglect or refusal may give order to such person who is responsible to give monthly allowances for the maintenance of his wife or child or father or mother at the monthly rate which the Magistrate of the first class deems fit.

The applicant who has files the application may have certain proof the applicant has no means to maintain itself and that the person against whom the application is filed has sufficient means to maintain the applicant.

For eg: If Magistrate has certain proof that the person against whom the application is files has no means to maintain himself or any other person then the magistrate on such proof may cancel the order.

Now, if even after the order of the magistrate the person to whom the order is given fails to provide maintenance then the magistrate can issue a warrant against him to pay wholly or partly amount of maintenance and also the imprisonment which may extend to one month. Provided that if the applicant do not file application for the same with one year when the amount becomes due and secondly if husband agrees to maintain his wife on the condition that she will live with him but she refuses without giving any reasonable ground.

If the husband proves that his wife was living in adultery and if wife has no specific reason to leave her husband or if both are living separately mutually then the magistrate can also cancel the order for Maintenance.

Now Section 126 talks about the procedure for the order of maintenance under Section 125.

The application for the maintenance can be filed under this section under the Magistrate of first class. The place where the application can be filed can be any district where;

- He lives, or;
- Where his or his wife lives, or;
- Where he and his wife last resided together.

The person against whom the order for maintenance will be passed should be presented at the time of taking evidence or when his personal attendance is administered within the presence of his advocate, and shall be recorded in the manner given in notice;

Proviso:

If the magistrate is satisfied that the person against whom the order has been passed is wilfully not attending the proceeding then the magistrate can pass ex-parte order against that person.

Section 127 provides the Alteration in allowance;

The magistrate can alter the amount of maintenance provided under section-125 if the circumstances of the person who is receiving the maintenance changes. For eg: If the circumstances of the applicant improves then the amount of maintenance can be reduced accordingly and vice-versa.

The order for the maintenance given to wife can also be cancelled in certain circumstances. They are:

- ❖ If wife is found guilty for doing adultery;
- ❖ If wife has left her husband without giving any appropriate reason;
- ❖ If wife and husband are separated mutually;
- ❖ If wife herself after divorce refuses for the maintenance;

- ❖ If wife has remarried after divorce.
- ❖ When before or after divorce she has received the whole amount which was payable to her.

Section-128 provides the Enforcement of order of maintenance:

Lastly, the order of the magistrate should be given to the person in whose favour the decision is passed in free of cost or to the guardian of that person if there is any or to the person to whom the maintenance is give and such order can be passed by any magistrate of any place.

