

**126. Procedure.**—(1) Proceedings under section 125 may be taken against any person 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.

(2) 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-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

**127. Alteration in allowance.**—<sup>1</sup>[(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to <sup>2</sup>[maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a <sup>3</sup>[monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such

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1. Subs. by Act 50 of 2001, s. 3, for sub-section (1) (w.e.f. 24-9-2001).

2. Subs. by Act 50 of 2001, s. 3, for “maintenance” (w.e.f. 24-9-2001).

3. Subs. by s. 3, *ibid.*, for “monthly allowance has been ordered” (w.e.f. 24-9-2001).