SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			CRLR/835/2025 Sumaiya --Revisionist **Versus** Amir --Respondent **Hon'ble Alok Mahra, J.** Mr. T.P.S. Takuli, Advocate for the revisionists. Mr. Rishabh Bisht, Advocate, holding brief of Mr. Vikas Kumar Guglani, Advocate for the respondent. 2. Today, the parties were directed to appear in person. In compliance thereof, the revisionists are present before the Court, whereas the respondent has joined the proceedings through Video Conferencing. This Court interacted with the parties with a view to ascertain whether there exists any possibility of an amicable settlement between them. Upon being so interacted with, the respondent has categorically stated that there are no chances of any amicable settlement between the parties. In view thereof, the matter is required to be considered and decided on its merits. 3. The present Criminal Revision has been preferred by the revisionists assailing the order dated 12.11.2025 passed by learned Principal Judge, Family Court, Nainital in Misc. Criminal Case No.90 of 2024, whereby the application preferred by the revisionists under Section 125 of the Code of Criminal Procedure, 1973 has been dismissed as not maintainable on the ground of lack of territorial jurisdiction. 4. Learned counsel for the revisionists submits that the learned Court below has erred in law in holding the application under Section 125 Cr.P.C. to be not maintainable before the Family Court, Nainital, by overlooking the

provisions contained in Section 126(1) Cr.P.C. He submits that Section 126(1) Cr.P.C. does not stipulate that the wife or the person seeking maintenance must be a "permanent resident" of the place where the proceedings are instituted. According to him, the provision confers jurisdiction, inter alia, upon the Court within whose jurisdiction the person against whom maintenance is claimed or his wife resides. It is, therefore, contended that the mere fact that the parental or matrimonial home of revisionist no.1 is situated at Delhi cannot, by itself, oust the jurisdiction of the Family Court at Nainital, particularly when the revisionists were residing at Nainital at the relevant time.

5. It is the specific case of the revisionists that revisionist no.1, along with her minor child, i.e. revisionist no.2, had been residing with her maternal aunt (*Mausi*) at Nainital for about two months prior to the institution of the proceedings under Section 125 Cr.P.C. and has continued to reside at Nainital thereafter. It is further stated that revisionist no.1 intends to continue residing at Nainital.

6. Per contra, learned counsel appearing for the respondent submits that the proceedings under Section 125 Cr.P.C. have been instituted by the revisionists at Nainital only with a view to harass and victimize the respondent. He submits that the matrimonial as well as parental home of revisionist no.1 is situated at Delhi; the marriage was solemnized at Delhi and revisionist no.2 was also born at Delhi. It is, therefore, contended that the entire matrimonial relationship and the alleged cause of action are connected with Delhi and the revisionists have merely taken up residence at Nainital for the purpose of invoking the jurisdiction of the Family Court there.

7. Heard learned counsel for the parties and perused the record. The controversy before this Court is confined to the territorial jurisdiction of learned Principal Judge, Family Court, Nainital to entertain the application preferred by the revisionists under Section 125 Cr.P.C.

8. Section 126(1) Cr.P.C. provides for the place where proceedings under Section 125 Cr.P.C. may be taken. The provision does not prescribe that the wife or the person claiming

			maintenance must establish "permanent residence" at the place where the proceedings are instituted. The expression "resides" employed in the statutory provision cannot be equated, as a matter of law, with "permanent residence". The question, therefore, is whether the residence claimed by the revisionists at Nainital was a genuine and substantive residence or was merely a contrivance adopted for the purpose of creating territorial jurisdiction. 9. It is equally well settled that the jurisdiction conferred under Section 126(1) Cr.P.C. cannot be invoked by creating a purely artificial or colourable residence solely for the purpose of instituting proceedings. Where the Court finds that a person has merely set up a temporary or fictitious residence at a particular place with no genuine intention of residing there and only with a view to confer jurisdiction upon a particular Court, such conduct may disentitle the person from invoking such jurisdiction. However, the mere absence of permanent residence, by itself, is not sufficient to oust the jurisdiction otherwise conferred by the statute. 10. In the present case, the specific case pleaded by the revisionists is that revisionist no.1, along with her minor child, had been residing with her maternal aunt at Nainital for about two months prior to the filing of the application under Section 125 Cr.P.C. and has continued to reside there even thereafter. It is also pleaded that she intends to continue residing at Nainital. Thus, the case pleaded before the learned Court below was not of a wholly transient or fictitious stay at Nainital. Merely because the parental and matrimonial homes of revisionist no.1 are situated at Delhi, or that the marriage and birth of the minor child took place at Delhi, cannot, in the absence of a finding that the residence at Nainital was sham, fictitious or merely colourable, be treated as sufficient to deprive the Family Court, Nainital of the jurisdiction otherwise available to it under Section 126(1) Cr.P.C. The place where the parties were married or where the child was born is not, by itself, determinative of the territorial jurisdiction in proceedings under Section 125 Cr.P.C. 11. Learned Court below, while dismissing the

application as not maintainable, has proceeded principally on the premise that the permanent residence of revisionist no.1 is at Delhi and that her maternal home is also situated at Delhi. Such an approach, in the considered opinion of this Court, does not accord with the plain language and scope of Section 126(1) Cr.P.C., which does not make "permanent residence" an essential requirement for invoking the jurisdiction of a Court where the wife actually resides.

12. In view of the aforesaid discussion, this Court is of the considered opinion that the application under Section 125 Cr.P.C. could not have been dismissed at the threshold merely on the ground that revisionist no.1 has her parental and matrimonial residence at Delhi. The impugned order, therefore, cannot be sustained in law.

13. Accordingly, the Criminal Revision is allowed. The order dated 12.11.2025 passed by learned Principal Judge, Family Court, Nainital in Misc. Criminal Case No.90 of 2024 is hereby set aside. The matter is remitted to learned Principal Judge, Family Court, Nainital, to consider and decide the application preferred by the revisionists under Section 125 Cr.P.C. on its own merits, in accordance with law, after affording due opportunity of hearing to both the parties.

(Alok Mahra, J.)
06.10.2026

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