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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12 December 2024

+ CRL.REV.P. 1334/2024 & CRL.M.A. 36179/2024

MR. KUNWER FAHMED ALAM ARIYANAPetitioner

Through: Mr. Nishant Rai Goel and Ms. Amrita
Jha, Advocates.

versus

MS. MAMTESH ALAM @MAMTESHRespondent

Through: Ms. Shubhi Gupta, APP for the State

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

Does apostasy disentitle a woman from receiving maintenance under section 125 of the Code of Criminal Procedure Code 1973 ('Cr.P.C.')? This question has arisen in the context of a challenge to an order granting maintenance to a wife, who, having married a Muslim man by converting to Islam, has subsequently re-converted to Hinduism.

2. By way of the present revision petition filed under section 438 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner (husband) impugns order dated 03.10.2024 passed by the learned Judge, Family Court, Karkardooma District Courts, Delhi ('Family Court'), whereby the learned Family Court has been pleased to award maintenance in the sum of Rs.15,000/- per month to the respondent



(wife) and Rs.25,000/- per month to the petitioner's minor son, who is about 6 years old, in proceedings under section 125 Cr.P.C.

3. At the stage of preliminary hearing of the matter, Mr. Nishant Rai Goel and Ms. Amrita Jha, learned counsel appearing for the petitioner premised their challenge to the impugned order on the legal issue : namely, that apostasy of Islam by the wife resulted in the *nikah* between the parties being 'annulled'; and that therefore, the respondent *neither is nor ever was* the petitioner's wife and is not entitled to any maintenance under section 125 Cr.P.C.
4. In this backdrop, learned APP, who was present in court on the first date of hearing, offered to assist this court on the legal issue raised by the petitioner.
5. Further to that, the court has heard Mr. Goel and Ms. Jha; as well as Ms. Shubhi Gupta, learned APP assisting this court, at length.

PETITIONER'S SUBMISSIONS

6. Mr. Goel has first drawn attention to the provision of section 125 Cr.P.C., which reads as follows :

"125. Order for maintenance of wives, children and parents.

(1)If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b)his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,



a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation. – For the purposes of this Chapter, –

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

*(b) “wife” **includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.***

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.



(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. – If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

(emphasis supplied)



7. Dilating on the argument that apostasy leads to ‘annulment’ of the marriage, Mr. Goel has argued that the respondent, who was then Hindu by faith, converted to Islam and contracted *nikah* with the petitioner on 04.11.2009. Learned counsel submits however, that it is the admitted position, that subsequently on 25.10.2020, that is after about 11 years of being married, the respondent re-converted to Hinduism and accordingly apostatized from Islam. It is argued, that by reason of the respondent having apostatized, the marriage between the parties *stood annulled*, namely it was *rendered null-and-void* from the very beginning; and therefore, it cannot be said that the respondent was *ever* the petitioner’s wife. It is argued that as a result, the respondent does not fall within the meaning of “wife” under Explanation (b) to section 125(1) of the Cr.P.C., which may be noticed :

“(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.”

8. It is accordingly the argument, that though a divorced woman continues to be ‘wife’ for purposes of section 125 Cr.P.C. so long as she does not remarry, if a woman was *never married* to a man, obviously, she would not fall within the definition of ‘wife’ under section 125 Cr.P.C.
9. In support of this submission, Mr. Goel has also relied upon the Proviso to section 4 of the Dissolution of Muslim Marriages Act, 1939 which reads as follows :

“4. Effect of conversion to another faith. — The renunciation of Islam by a married Muslim woman or



*her conversion to a faith other than Islam **shall not by itself operate to dissolve her marriage:***

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in Section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.”

(emphasis supplied)

The submission being, that since the respondent re-embraced Hinduism, in view of the second proviso to section 4 extracted above, the marriage between the parties stood automatically dissolved; and the petitioner is not obligated to pay any maintenance to the respondent even under Muslim Personal Law.

10. To support the above submission, learned counsel has also placed reliance on a *fatwa* issued by Darul Ifta (Fatwa Department), Madarsa Hussain Bakhsh, Moti Mahal, Jama Masjid, Delhi by which Islamic Scholars have opined that according to Sharia Law the husband is not obligated to pay any maintenance to his wife since she has become an apostate.
11. Mr. Goel further draws attention to paras 12 and 13 of the decision of a Division Bench of this court in ***Munavvar-ul-Islam vs. Rishu Arora & Rukhsar***,¹ to support his argument that apostacy from Islam leads to ‘annulment’ of the *nikah*. The relevant paragraphs of the judgment read as follows :

“12. As early as 1870, Mr. Charles Hamilton, in his translation of Hedaya observes :

¹ 2014 SCC OnLine Del 1578



“In a case of apostacy separation takes place without divorce. If either husband or wife apostatize from the faith, a separation takes place without divorce, according to Haneefa and Aboo Yoosaf Mohammed alleges that if the apostacy be on the part of the husband, the separation is a divorce ... Haneefa makes a distinction between refusal of the faith and apostacy from it; and his reason for this distinction is that apostacy annuls marriage, because the blood of an apostate no longer remains under the protection of the law ... now divorce is used for the purpose of dissolving a marriage which actually exists; and hence apostacy cannot possibly be considered as divorce; contrary to the case of refusal of the faith, because it is on account of the ends of matrimony being thereby defeated that separation is enjoined, in that instance, as has been already said; and for this reason it is that the separation is there suspended upon a decree of the magistrate, whereas in apostacy it takes place without any such decree ...” [Charles Hamilton, Hedaya or Guide: A Commentary on the Mussulman Laws, (Second Edition, edited by Stanish Grove Grady, Volume 1, William H. Allen & Co., London, 1870), at p. 66]

(Emphasis supplied)²

“13. Shortly thereafter, in 1875, Mr. Neil Baillie observes in his Digest as under:

“Apostasy from Islam by one of a married pair is a cancellation of their marriage, which takes effect immediately without requiring the decree of a judge; and without being a repudiation, whether the occurrence is before or after consummation ... If they apostatize together, and then together re-embrace the faith, the marriage remains valid on a favourable construction; but if only one of them returns to the faith a separation takes place between them. If it is not known which of them was first in

² Phrase “Emphasis supplied” is in the original quote.



apostatizing, the result is the same as if they apostatized together...”[Neil BE Baillie, A Digest of Moohummudan Law, (Second Edition, Part First, Smith, Elder, & Co, London, 1875) pp. 182-183]

*(Emphasis supplied)*³

“If one of two spouses should apostatize from the Mussulman faith before connubial intercourse has taken place, their marriage is cancelled on the instant, and the wife has no right to dower if the apostasy be on her side; but if it is on the side of the husband she is entitled to half the dower. **If the apostasy does not take place till after connubial intercourse, the cancellation of the marriage is suspended till the expiration of the iddut, whether the husband or the wife be the apostate, and no part of the dower abates, because the right to it has been fully established by consummation. There is an exception, however, if the husband were born in the faith, for in that case, the marriage is cancelled immediately, though it should have been followed by connubial intercourse, because a return to the faith is not allowed.**” [Op. cit., Part Second, pp. 29-30.]

(emphasis supplied)

12. Learned counsel accordingly submits, that since apostasy leads to annulment of the marriage, the petitioner has no liability to pay any maintenance to the respondent under section 125 Cr.P.C., since the respondent was never his wife, and the impugned order deserves to be set-aside.
13. Insofar as the quantum of maintenance awarded is concerned, counsel argues that the learned Family Court has failed to appreciate that

³ Phrase “Emphasis supplied” is in the original quote.



while at one stage the petitioner, who is a structural engineer by profession, was employed and was earning well, he has since lost his job; and is therefore no longer in a position to pay the maintenance awarded in favour of the respondent as well as his son. In support of this submission, counsel draws attention to the opening words of section 125 Cr.P.C., which say : “If any person having sufficient means neglects or refuses to maintain ...” and it is argued, that at the present time the petitioner does not have sufficient means to pay maintenance to his wife or child.

SUBMISSIONS BY THE STATE

14. Arguing against the contentions raised on behalf of the petitioner, Ms. Gupta, learned APP has drawn attention of this court to the following extracts of *Munavvar-ul-Islam* (supra) :

*“18. While doubtless the jurists are **divided** on whether the factum of apostasy **dissolves** the marriage or renders it **invalid or void or null**, there is certainly unanimity amongst both the jurists as well as the judgements of the Courts, that apostasy of either party to a marriage contracted under Muslim personal law shall put an end to the marriage. Thus the question arises as to whether the Act, more specifically, section 4 thereof, alters this state of law.*

* * * * *

“51. It must be noted that this contention was not raised before the Trial Court, nor is there any specific ground in the appeal to support this contention. In any case, on its own merit, the contention deserves to be rejected as proceeding from an incorrect understanding of Muslim personal law, and of law in general. A woman married under Muslim personal law is not empowered, nor is she conferred with a right to divorce her husband by apostatizing. All that the law states is that were a woman married under Muslim personal law to apostatize, the marriage stands dissolved. In such circumstances, the woman is entitled to seek a decree of



declaration that the marriage stands dissolved from the date of her apostatizing. Secondly, while it is doubtless that the husband's right in such a case to divorce his wife by pronouncing talaq is affected, the same is not due to operation of law or of a judicial pronouncement; the right stands affected by the simple fact that the marriage has already dissolved. Inasmuch as it is not the contention of the appellant that any of his vested right is taken away by the Act retrospectively, the contention is not one to be taken up in support of this appeal.”

(emphasis supplied)

15. Ms. Gupta argues, that though the Division Bench in *Munavvar-ul-Islam* (supra) quotes the authors Charles Hamilton and Neil Baillie in their judgment, what the Division Bench *holds as a matter of law* is that where a woman married under the Muslim Personal Law apostasies, the marriage stands ‘dissolved’. Counsel submits therefore, that the ratio of the decision is that apostasy leads to *automatic dissolution* of marriage but *not to annulment* of the marriage; which would mean that at the very least, the status of the respondent would be that of a divorced-wife.
16. Furthermore, Ms. Gupta argues, that since admittedly the respondent-wife has not re-married, it is trite law that all married or divorced women, *irrespective of their religion* are entitled to maintenance under section 125 Cr.P.C.

ANALYSIS & CONCLUSIONS

17. On a plain reading of section 125 Cr.P.C, it is seen that the section carries no reference to, or connection with, any religious denomination. Moreover, the provision is found in the Cr.P.C., which



in any case is a code of procedure which is agnostic to any personal law.

18. Besides, even section 4 of the Dissolution of Muslim Marriages Act, 1939 cited by the petitioner, refers to *dissolution* of a Muslim marriage upon conversion of a woman to another faith. It is in that respect, that the second proviso to section 4 says that, if a woman converts to Islam and gets married to a Muslim man and then re-embraces her former faith, the protection against automatic dissolution of marriage contained in Section 4 would not be available to such woman; and, that in case of such woman, renunciation of Islam or conversion to some other faith would “by itself operate to dissolve her marriage”. Yet again, that would be a case of *dissolution* of marriage, implying thereby that the existence of marriage in the first place stands acknowledged. Ergo, it would not be a case of a marriage being treated as annulled or *void ab-initio*.
19. A holistic reading of the Division Bench verdict in *Munavvar-ul-Islam* (supra) shows that the court only holds, that upon a woman married under Muslim law apostatizing, the marriage stands dissolved and a decree to that effect can be obtained by such woman declaring that the marriage stands dissolved. Again therefore, the situation contemplated is of *dissolution* of a marriage and not its *annulment*. For purposes of section 125 Cr.P.C therefore, such a woman would be a wife who has been divorced, or who has obtained divorce, and not a woman who was never married.
20. Most importantly, this court finds that in a very recent decision of the Supreme Court in *Mohd. Abdul Samad vs. State of Telangana and*



Another,⁴ the Supreme Court has categorically reiterated the secular character of section 125 Cr.P.C. in the following words⁵:

“12. Numerous decisions of this Court went on to state that Section 125 of CrPC 1973 is a measure for social justice to protect the weaker sections, irrespective of applicable personal laws of the parties, as contemplated through Articles 15(3) and 38 of the Constitution of India. This Court similarly held in the decision of Shri Bhagwan Dutt v. Smt. Kamla Devi (1975) 2 SCC 386 that the nature of power and jurisdiction vested with a Magistrate by virtue of the instate provision is not punitive in nature and neither it is remedial, but it is a preventive measure. It was also observed that while any such right may or may not exist as a consequence of any of the personal laws applicable to the concerned parties, they shall continue to exist distinctively, and independently as against the secular provision.

* * * * *

“14. In Fuzlunbi v. K. Khader Vali (1980) 4 SCC 125 (SC), it was categorically observed by this Court that enactment of the said provision charges the court with a deliberate secular design to enforce maintenance or its equivalent against the humane obligation, which is derived from the State's responsibility for social welfare. The same is not confined to members of one religion or region, but the whole community of womanhood.

“15. At this stage, it is pertinent to consider the concerned personal laws which allegedly stand in conflict with the secular provision of Section 125 of CrPC 1973. The 1986 Act was brought about by the legislature as an attempt to clarify the position laid down. A 5-Judge Bench in Mohd. Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556 extensively dealt with the issue of maintenance apropos the obligation of a Muslim husband to his divorced wife who is unable to maintain herself, either after having been given divorce or having had sought one. The Bench unanimously went on to hold that the obligation of such a husband would not be

⁴ 2024 SCC OnLine SC 1686

⁵ per Augustine George Masih J.



affected by the existence of any personal law in the said regard and the independent remedy for seeking maintenance under Section 125 of CrPC 1973 is always available. It also went on to observe that, even assuming, there is any conflict between the secular and personal law provisions in regard to maintenance being sought by a divorced wife, the Explanation to second Proviso to Section 125(3) of CrPC 1973 unmistakably shows the overriding nature of the former. While elaborating on the said observation, it explained that the wife has been conferred with the right to refuse to live with her husband who has contracted another marriage, let alone three or four other marriages.

* * * * *

“18. The position that the rights under Section 125 of CrPC 1973 would also be accessible to a divorced Muslim woman was substantially reiterated in Shabana Bano v. Imran Khan (2010) 1 SCC 666, whereby this Court, through a cumulative reading of the decision in Danial Latifi (supra), reached the said conclusion.”

(emphasis supplied)

21. In the concurrent decision of the other Hon’ble Judge in *Mohd. Abdul Samad* (supra) also it has been observed as follows⁶ :

“36. The 1986 Act thus continues to operate within the same juridical compass as the judgment in Shah Bano and the reasons for upholding the constitutionality of Danial Latifi cannot be lost sight of. The crux of the reasoning in Danial Latifi is that the 1986 Act is a social welfare legislation that seeks to provide an additional right and thereby, an additional remedy. Danial Latifi implicitly recognises the cardinal principle of non-retrogression that prohibits the State from taking measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise vide Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, Pr. 202. I therefore reiterate that the 1986 Act does not take away rights that divorced Muslim women have either under personal law or under Section 125 of the CrPC. I do

⁶ per B.V. Nagarathna J.



not find any inconsistency between the provisions of the 1986 Act and Section 125 of the CrPC. **Thus, a Muslim divorced wife is entitled to maintenance under Section 125 CrPC irrespective of her personal law, as reiterated in Shabana Bano v. Imran Khan, (2009) 14 Scale 331.** Such a construction would not defeat the legislative intent and diminish the scope of additional protection afforded to Muslim women under the 1986 Act.”

* * * * *

“40. Therefore, the position of law with regard to harmonious interpretation of Sections 125-128 of the CrPC and the 1986 Act can be summarised as under:

i. There cannot be a disparity amongst divorced Muslim women on the basis of the law under which they were married or divorced in the matter of their maintenance post-divorce. The definition of “divorced woman” under the 1986 Act would include only a Muslim woman who has married according to Muslim law but also divorced under that law. But if a Muslim woman has been married under the Special Marriage Act, such a Muslim woman who is divorced, cannot get the benefit of the 1986 Act. Such a Muslim woman, who is divorced, would have to proceed either under the provisions of the Special Marriage Act, 1954 and/or under Section 125 of the CrPC. **Therefore, the protective provision of Section 125 ought to remain available to every divorced Muslim woman to avoid the absurd outcome of a section of Muslim women being left remediless under the 1986 Act.** As a corollary, it is held that such women who are covered under the 1986 Act are also entitled to the benefit of Section 125 of the CrPC. Further, there can be no bar under the Explanation (b) to Section 125 of the CrPC so as to exclude any Muslim woman who has been divorced or has obtained a divorce from her husband and has not remarried. This is irrespective of the 1986 Act being applicable to only such divorced Muslim woman who qualifies within the definition of divorced woman under Section 2(a) of the 1986 Act.



ii. Section 3 of the 1986 Act provides for a reasonable and fair provision of maintenance to a divorced Muslim woman only on certain terms and conditions within the iddat period by her husband. Once the iddat period expires, the personal law obligation to maintain the divorced Muslim woman by the husband ceases. **Per contra, under Section 125 of the CrPC, any divorced wife who has not remarried is entitled to maintenance by her ex-husband who has sufficient means but has neglected or refused to maintain her.**

iii. Further, under Section 3(1)(b) of the 1986 Act, where a divorced woman maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance has to be made and paid by her former husband only for a period of two years from the respective dates of birth of such children and not beyond the said period. However, **under Section 125 of the CrPC, there is no such restriction of maintenance to be provided only for a period of two years from the respective dates of birth of such children in the case of a divorced wife. The obligation is until the children attain the age of majority and in terms of the said Section.**

iv.

v. **I, therefore, hold that Section 125 of the CrPC cannot be excluded from its application to a divorced Muslim woman irrespective of the law under which she is divorced.** There cannot be disparity in receiving maintenance on the basis of the law under which a woman is married or divorced. The same cannot be a basis for discriminating a divorced woman entitled to maintenance as per the conditions stipulated under Section 125 of the CrPC or any personal or other law such as the 1986 Act. I also note that although the provisions of the 1986 Act have been upheld by a Constitution Bench of this Court in the case of Danial Latifi, the same would not in any way restrict the



application of Section 125 of the CrPC to a divorced Muslim woman.”

* * * * *

“x. Hence, what emerges is that the 1986 Act is not a substitute for Section 125 of the CrPC and nor has it supplanted it and both can operate simultaneously at the option of a divorced Muslim woman as they operate in different fields. As I find no conflict between the provisions of the 1986 Act, which is a piece of legislation in the nature of quasi-personal law insofar as the divorced Muslim wife is concerned and **Section 125 of the CrPC which is a statutory provision applicable to women belonging to all faiths therefore the latter cannot be restricted in its operation to divorced Muslim women.** I find that if Section 125 of the CrPC is excluded from its application to a divorced Muslim woman, it would be in violation of Article 15(1) of the Constitution of India which states that the State shall not discriminate against any citizen only on the ground of religion, race, caste, sex, place of birth or any of them. Further, our interpretation is consistent with the spirit of Article 15(3) of the Constitution.”

(emphasis supplied)

22. Furthermore, in the order appended to its judgment in *Mohd. Abdul Samad* (supra), the Supreme Court has reiterated the application of section 125 Cr.P.C. in the following words :

“c) Insofar as divorced Muslim women are concerned, -

* * * * *

ii) **If Muslim women are married and divorced under Muslim law then Section 125 of the CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws.** This is because the 1986 Act is not in derogation of Section 125 of the CrPC but in addition to the said provision.”

(emphasis supplied)



23. Also, it must be noticed that the Legislature has specifically embedded in section 125 Cr.P.C. itself the grounds which disentitle a wife to receive maintenance from her husband, namely: unjustified refusal of the wife to live with the husband; or the wife living in adultery. To hold that conversion or re-conversion from a particular religion would disentitle a wife from receiving maintenance under section 125 Cr.P.C. would do violence to the very intent and purpose for which the said provision was brought onto the statute book.
24. It is also observed that though in *Munavvar-ul-Islam* (supra) a Division Bench of this court considered the views of the learned authors Charles Hamilton and Neil Braille and their understanding of the status of a Muslim marriage on apostasy under Muslim law, what the Division Bench finally *ruled* is that apostasy by a woman leads to ‘dissolution’ of a Muslim marriage. Nowhere has the Division Bench held, that as a matter of law, apostasy leads to an ‘annulment’ of marriage as contra-distinct from its ‘dissolution’. This court is accordingly inclined to accept the submission made on behalf of the State, that the ratio of the decision in *Munavvar-ul-Islam* (supra) is that apostasy leads to *automatic dissolution* of marriage but *not to annulment* of the marriage (and a decree of declaration that the marriage stands dissolved may subsequently be obtained from a court). Clearly therefore, even on apostatizing, in the present case the respondent would be a ‘divorced-wife’ of the petitioner.
25. To repeat, by apostatizing Islam, the respondent caused the *immediate dissolution* of her 11-year marriage with the petitioner; and there is no



basis to hold that the marriage was rendered *ab-initio void* or that it stood annulled.

26. As a sequitur to this, in the opinion of this court, the respondent's apostasy of Islam *would not disentitle* her from receiving maintenance under section 125 Cr.P.C. so long as she does not re-marry.
27. The next question that must be addressed is whether or not the amount of maintenance awarded to the respondent-wife and the petitioner's son is excessive, as claimed by the petitioner. Since no notice has been issued on the present petition, this question would have to be considered based on the record.
28. In this respect, it is noticed that in paras 43 and 44 of the impugned judgment, the learned Family Court has held as follows :

"43. Now in order to decide the quantum of maintenance, the income of the respondent needs to be assessed. It is the case of petitioner that respondent is an Architect and was earning more than Rs.2 lakhs. On the other hand, it is the case of respondent that he is B.E. (civil) and his service has been terminated on 05.02.2024. He has placed on record the relieving order which was exhibited as Ex.RW1/1. The letter Ex.RW1/1 does not bear the stamp of the company, no witness was examined from the company to prove this letter. Respondent never proved this document in accordance with law. Respondent in his cross-examination admitted that his gross salary was Rs.2 lakh in 2024 and net salary Rs.1,58,000/-. The relevant portion of the cross-examination is reproduced as under:-

"My gross salary of January 2024 was around Rs.2 lakhs. My net salary was Rs.1,58,000/- "

"44. Respondent has placed on record the statement of account for the period 01.10.2021 till 05.03.2022 i.e. only for five months. There is not even a single entry with respect to his salary. This suggest that the said account is not a salary account. Respondent never placed on record his salary slip. The Court has



been kept completely in dark as to whether the deduction arc compulsory or not. Under Section 109 of the BNSS, 2023 (Section 106 of the Indian Evidence Act 1872), the burden was upon the respondent to prove his actual income which he has failed to do so. On record there is an admission of the respondent regarding his salary/income i.e. net salary to be Rs.1,58,000/- in January 2024. The present petition was filed in November 2021. In the affidavit of income, assets and liabilities which was filed in April 2022, he claimed his salary to be around Rs.1,26,000/-. The salary of the respondent in November 2021 by no stretch of imagination could have been less than Rs.1,25,000/-. Hence for the purpose of the disposal of the present petition, his salary is assessed to be Rs.1,25,000/-.”

(emphasis supplied)

29. Evidently therefore, the learned Family Court’s conclusion that the petitioner’s salary was about Rs.1.25 lacs per month is *based on an admission* made by the petitioner himself in the course of his cross-examination, where he has specifically admitted that gross salary in January 2024 was around Rs. 2 lacs and that his net salary was Rs. 1.58 lacs. There is also nothing remiss in the observation of the learned Family Court in the impugned judgment, that if the ‘actual’ income of the petitioner was any different, the petitioner had failed to discharge the onus on him to prove his actual income in view of section 106 of the Indian Evidence Act, 1872.
30. In the opinion of this court therefore, there is no basis to hold that the inference drawn by the learned Family Court in relation to the petitioner’s monthly income is erroneous.
31. Accordingly, this court finds nothing remiss in the correctness, legality or propriety of impugned order dated 03.10.2024 that would warrant interference by this court in its revisional jurisdiction.



32. The petition is accordingly dismissed at the stage of issuance of notice itself.
33. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 12, 2024/ak/vr