

CRL RC(MD)No.221 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.221 of 2025

and

CRL MP(MD)No.2329 of 2025

Karthiyayini

... Revision Petitioner/ Petitioner

Vs.

Selavamari

... Respondent / Respondent

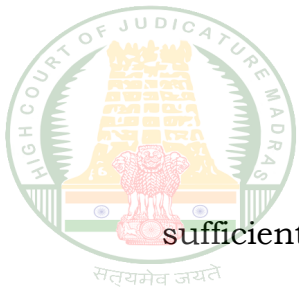
PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records pertaining to the impugned order in M.C.No.71 of 2019 on the file of the Family Court, Madurai, and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.S.M.Arunkumaar

For Respondent : Mr.M.Ganesan

ORDER

The revision arises from proceedings under Section 125 Cr.P.C.,1973, (now pari materia Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 by repeal and saving) seeking maintenance by the petitioner/wife against the respondent/husband, a Junior Engineer (Military Engineering Services). The learned Family Court, by order dated 13.12.2024 in M.C. No. 71 of 2019, dismissed the claim holding that the petitioner had, without



sufficient cause, refused to live with the respondent and was, therefore, disentitled to maintenance. The wife challenges the said decision.

2. **Facts:**

The marriage is an arranged one, solemnised on 14.06.2017 at Arulmigu Venkatachalapathi Temple, Tallakulam, Madurai, followed by reception at V.S. Chellam Saraswathi Mahal, Madurai. The respondent is employed in the Indian Army (Junior Engineer, MES; c/o Garrison Engineer Project, New Cantonment, opposite Military Hospital, Allahabad-211001).

The petitioner alleges: (i) a pre marital dispute about dowry and quantum of jewels leading to a complaint by her mother to the Assistant Commissioner, Tallakulam, who counselled the parties;

(ii) an understanding allegedly recorded/communicated that the petitioner would not be compelled to reside in the respondent's native village, Melamundal, owing to inadequate civic/medical facilities;

(iii) very brief cohabitation at the petitioner's maternal home post marriage;

(iv) during her short stay at Melamundal on 24.06.2017, she suffered acute abdominal pain; due to lack of medical facilities she returned to Madurai;

(v) thereafter the relationship deteriorated; complaints were lodged



with Othakadai Police; attempts at rapprochement allegedly failed; (vi) the respondent insisted she must reside first at Melamundal and only thereafter he would consider taking her to his place of posting;

(vii) she is living with and care giving for her ailing senior citizen mother;

(viii) the respondent draws about 1,00,000 per month and has agricultural income; she claimed 40,000 p.m. as maintenance.

3. ***The respondent's defence before the Family Court:*** the petitioner wilfully refused to reside in her matrimonial home, even for customary ceremonies, and left without intimation on the second visit; he filed H.M.O.P. No.28 of 2018 for restitution of conjugal rights; according to him, the petitioner filed H.M.O.P. No.524 of 2018 for divorce and later obtained an ex parte decree on 09.10.2019; and he has since remarried in 2020 and has a child. The learned Family Court recorded the filing of H.M.O.P. No.524 of 2018 (as Court Document No.2). However, a certified copy of the divorce decree dated 09.10.2019 was not exhibited. The rival pleadings on divorce are noticed as submissions.

4. ***Trial Court's Decision (impugned):***

The Family Court, after extracting Section 125 Cr.P.C. 1973, held that the petitioner refused to live with the husband without sufficient cause,



treating her insistence on not living at Melamundal as the crux of the dispute. It also treated a police complaint allegedly lodged before marriage (not formally marked by either party) as a “Court document No.1” and reasoned that the wife’s stand not to go to the matrimonial village at all was unreasonable. On that premise, the maintenance petition was dismissed.

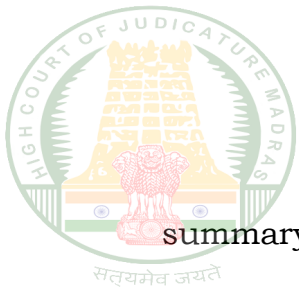
5. Points for Determination:

The following questions arise:

- a) Whether the Family Court was right in concluding that the petitioner “refused to live” with the husband without sufficient reason so as to attract the bar under Section 125(4) Cr.P.C.1973?
- b) What is the legal effect, if any, of an alleged decree of divorce (if proved) on the wife’s entitlement to maintenance?
- c) Whether the Family Court’s approach in suo motu treating unproved documents as Court exhibits and relying on them, without affording an opportunity to the parties, vitiates the order?
- d) Consequent relief, whether the petitioner is entitled to maintenance; if yes, on what basis, from when, and to what extent pending a proper inquiry into the parties’ means?

6. Governing Principles: Section 125 Cr.P.C. 1973:

- (i) The object of Section 125 is preventing destitution and vagrancy by compelling those with sufficient means to support their dependents; it is a



summary social justice measure. The Supreme Court has repeatedly emphasised that maintenance “is not a bounty” but a measure of social justice and the husband’s sacred statutory duty. **Bhuwan Mohan Singh v. Meena**¹ underscores the humanitarian object and urges courts to decide such claims with expedition.

(ii) In **Shamima Farooqui v. Shahid Khan**², the Court reiterated that a husband with sufficient means cannot shirk his obligation; pleas of financial constraint are no defence when the wife is left to fend for herself.

(iii) The meaning of “unable to maintain herself” is explained in **Chaturbhuj v. Sita Bai**³, the court observed that the occasional earnings or potential employability do not bar relief.

The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband;

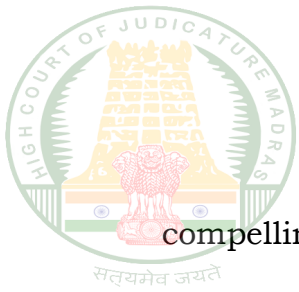
(iv) “Capacity to earn” by itself is not a ground to deny maintenance; the inquiry is whether the wife actually has sufficient income to maintain herself as observed in **Shailja v. Khobbanna** CRIMINAL APPEAL NOs. 125 126 of 2017 dated 18.01.2017.

(v) Where a wife lives separately, the bar under Section 125(4) applies only if the wife without sufficient reason refuses to live with her husband. Allegations of cruelty, dowry demand, absence of basic facilities, or

1 2015 (6) SCC 353

2 2015 5 SCC 705

3 2008 (2) SCC 316



compelling circumstances constitute sufficient reason.

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(vi) On date from which maintenance is payable and on financial disclosure, **Rajnish v. Neha**⁴ lays down comprehensive guidelines: maintenance should ordinarily be from the date of application, and both parties must file Affidavits of Disclosure of Assets and Liabilities to enable a realistic assessment.

(vii) If the parties stand divorced, a divorced wife is still entitled to claim maintenance under Section 125 (subject to the condition that she has not remarried). The bar under Section 125(4) (refusal to live with the husband) is inapplicable post divorce as observed in **Rohtash Singh v. Ramendri**⁵.

(viii) In fixing quantum, courts balance the wife's needs and the husband's means, keeping in view the status of the parties, reasonable expenses, and cost of living. The Hon'ble Supreme Court in **Bhagwan Dutt v. Kamla Devi**⁶, has observed that the needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments

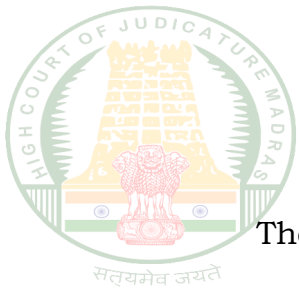
7. Discussion and Findings:

A. Was the wife's separate residence without sufficient cause?

4 MANU/SC/0833/2020

5 2000 (3) SCC 180

6 1975 AIR 83



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The Family Court has treated the petitioner's reluctance to reside at Melamundal per se as unreasonable. The record, however, shows:

the parties barely cohabited for about ten days post marriage;

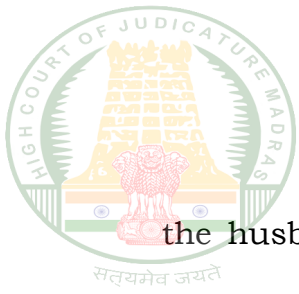
during the petitioner's second visit to Melamundal on 24.06.2017, she suffered severe abdominal pain; she pleads inadequate medical facilities and returned to Madurai;

there were pre marital and post marital complaints and police counselling;

the respondent's stand—as even per the wife's pleadings—is that she should first stay in the native village for some time, and only thereafter he would consider taking her to his place of posting/quarters.

Even assuming that the wife insisted upon residing at the husband's official quarters rather than at a rural joint family home lacking basic amenities, the query under Section 125(4) is not whether her preference accords with patriarchal custom; the real query is whether her insistence in the context of health, safety and reasonable living conditions was without sufficient cause. A wife need not prove extreme cruelty to justify separate residence; reasonable apprehension or objective inconvenience suffices.

The Family Court has also presumed that the wife never stayed at the matrimonial home except on two brief occasions and, therefore, lacked bona fides. That inference ignores her case of ill health and medical necessity and



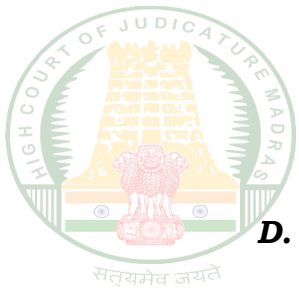
the husband's conditional willingness to take her to his station only after she resides at the village, an insistence that, in the facts, appears unreasonable. The conclusion that her separate residence was without sufficient cause is, therefore, perverse.

B. Effect of alleged divorce:

The respondent pleads an ex parte divorce dated 09.10.2019 and a subsequent remarriage in 2020. Even if a valid divorce decree exists (a matter for verification on remand), the petitioner would be a divorced wife and, so long as she has not remarried, she remains entitled to claim maintenance under Section 125 of Cr.P.C. 1973; the bar under Section 125(4) of Cr.P.C. 1973, ceases to apply. The Family Court, while noticing the divorce petition, analysed the claim as if the marriage subsisted and invoked Section 125(4), an approach contrary to law.

C. Procedural fairness reliance on unproved documents:

The Family Court suo motu treated a pre marital police complaint as a "Court document" and reasoned on its contents. Family Courts do have latitude in procedure; yet elementary fairness requires that documents influencing the outcome be put to the parties and, ordinarily, proved/marked through admissible evidence, particularly when used against a party. The impugned order suffers from this procedural infraction, further weakening its conclusions.



D. Entitlement and Quantum:

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On entitlement: Given the social welfare character of Section 125 and the analysis above, the petitioner is entitled to maintenance.

On quantum: The petitioner claims that the respondent draws 1,00,000 per month and also has agricultural income of 50,000. No pay slip or income proof was exhibited before the Family Court. In the absence of disclosure, this Court follows **Rajnesh v. Neha**⁷ and considers it appropriate to:

(a) direct both parties to file Affidavits of Disclosure of Assets and Liabilities in the Rajnesh format before the Family Court;

(b) fix an interim maintenance pending such inquiry, bearing in mind living costs in Madurai, the respondent's public employment, and the status of the parties.

8. As a working guideline, maintenance for a spouse alone commonly falls in the 25%–33% of the husband's net take home band, subject to facts and deductions (education of children, dependents, liabilities). In the present case, until disclosures are filed and evidence is taken, fixing an interim figure of 20,000 (Rupees Twenty Thousand only) per month would balance equities; it is subject to final determination and adjustment of

⁷ Extracted supra



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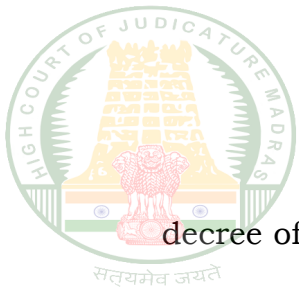
9. As regards the commencement date, following Rajnesh (include footnote as supra), maintenance shall ordinarily be from the date of application here, the filing date of M.C. No.71 of 2019 with credit for any sums already paid.

10. The Criminal Revision is **allowed** in part with the following directions:

(i) The order dated 13.12.2024 in M.C. No.71 of 2019 passed by the learned Family Court, Madurai, is set aside. The petitioner/wife's entitlement to maintenance under Section 125 Cr.P.C. is affirmed.

(ii) The respondent/husband shall pay interim maintenance of 20,000/ (Rupees Twenty Thousand only) per month to the petitioner from the date of the maintenance application in M.C. No.71 of 2019, subject to adjustment in the final computation. Any arrears up to 31.08.2025 shall be paid in four equal monthly instalments, the first to be paid on or before 30.09.2025 and the remaining on or before the last working day of each succeeding month; the current monthly maintenance for September 2025 and onwards shall be paid on or before the 10th of every month.

(iii) The matter is remanded to the learned Family Court, Madurai, limited to determination of quantum (and, if relevant, the effect of any



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decree of divorce and period for which maintenance is claimable), with these directions:

(a) Both parties shall, within three (3) weeks from the date of receipt of this order, file Affidavits of Disclosure of Assets and Liabilities in the Rajnesh v. Neha format, together with supporting documents (pay slips, Form 16/ITR, bank statements for last 12 months, proof of dependents and liabilities, medical expenses, rental agreements, agricultural revenue records, etc.).

(b) The Family Court shall take evidence preferably by strict timelines and render a reasoned order on quantum within twelve (12) weeks thereafter, applying the principles in Chaturbhuj, Shamima Farooqui, Bhagwan Dutt, and Rajnesh.

(c) If a divorce decree dated 09.10.2019 is relied upon by either side, the party shall produce a certified copy. The Family Court shall then compute maintenance for the relevant periods in terms of Rohtash Singh(include footnote as supra) considering that the petitioner is the divorced wife, and ensuring that any statutory bar in terms of subsequent remarriage of the claimant, is considered on proof.

(iv) **Mode of payment:** by bank transfer to the petitioner's account or through the Family Court deposit, with proof to be filed on record.

(v) **Consequences of default:** If the respondent defaults in two consecutive payments of the current interim maintenance or in any arrears



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installment, the petitioner shall be at liberty to seek coercive steps as per law; the Family Court may also consider awarding reasonable interest on arrears at the time of final order. No order as to costs.

11. Clarifications:

It is clarified that this Court has not recorded findings on contested facts (such as the exact salary, agricultural income, or the existence/validity of any divorce decree). Those issues are left open for determination on evidence by the Family Court. The observations herein on entitlement are legal conclusions on the proper application of Section 125 Cr.P.C. 1973, to the pleaded matrix. No costs. Consequently, connected miscellaneous petition is closed.

25.08.2025

NCC : Yes / No
Index : Yes / No
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To

The Family Court, Madurai.



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L.VICTORIA GOWRI, J.,

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