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CRL RC No. 590 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL RC No. 590 of 2022

T.Sezhiyan
S/o. Thillai Govindan,
D.No.9, Visalatchi Nagar,
Chidambaram Taluk,
Cuddalore District.

..Petitioner

Vs

Kala
W/o. Sezhiyan,
Vellaiyakoundanur Village,
S.Paparapatti Post, Attayampatti Via,
Salem Taluk and District.

..Respondent

Prayer : Criminal Revision Case filed under Section 397 and 401 of Code of Criminal Procedure, to set aside the order made in M.C.No. 31 of 2016 dated 01.02.2020 by the Family Court, Salem.

For Petitioner: Mr. M.Devaraj

For Respondent: P.Mani

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 01.02.2020 passed in M.C.No.31 of 2016 on the file of the Family Court, Salem, thereby ordering maintenance of Rs.7,000/- per month payable by the petitioner herein to the respondent.



2. The petitioner got married the respondent on 06.11.2000. At the time of marriage, the parents of the respondent presented 35 sovereigns of gold jewels and other sridhana articles. The petitioner is working as a professor in Annamalai University in the Department of Economics and earning a sum of Rs.1,00,000/- per month. Out of the wedlock, they gave birth to a male child. However, disputes arose between the parties, and according to the petitioner, the respondent deserted him and subjected him to cruelty. Therefore, the petitioner filed a petition in HMOP No.17 of 2005 on the file of the Subordinate Court, Chidambaram, seeking dissolution of marriage on the grounds of cruelty and desertion.

3. After a full-fledged trial, the Trial Court allowed the petition for divorce and dissolved the marriage on the ground of cruelty and desertion. Aggrieved by the same, the respondent preferred an appeal in CMA No.9 of 2013 on the file of the Principal District Court, Cuddalore. The Appellate Court partly allowed the appeal by confirming the decree of divorce on the ground of cruelty alone and set aside the finding with respect to desertion. Aggrieved by the same, once again, the respondent filed an appeal in CMSA No.14 of 2015 and the same was dismissed for default and thereafter taken steps to restore the appeal. Subsequently, the respondent was unable to maintain herself and filed a petition for maintenance in MC No.31 of 2016 before the Family Court, Salem. The Family Court, Salem, by order dated 01.02.2020, allowed the petition and



directed the petitioner herein to pay a sum of Rs.7,000/- per month as maintenance to the respondent from the date of petition i.e., 10.05.2016.

Aggrieved by the same, the present Criminal Revision Case has been filed.

4. The learned counsel appearing for the petitioner submitted that the respondent is not at all entitled to any maintenance, since the Trial Court granted a decree of divorce on the ground of desertion. There is a clear bar under Section 125(4) of the Code of Criminal Procedure and that the Trial Court, without considering the same, has mechanically allowed the maintenance case. He further submitted that the respondent, on her own, committed cruelty to the petitioner and that the decree of divorce was also granted on the ground of cruelty. Therefore, in view of the default committed by the respondent herself, she is not entitled for maintenance.

5. Per contra, the learned counsel appearing for the respondent submitted that though the Trial Court granted a decree of divorce on the ground of cruelty and desertion, the Appellate Court set aside the finding with regard to desertion and confirmed the decree of divorce on the ground of cruelty alone. Therefore, there is absolutely no bar for the respondent to claim maintenance under Section 125 of the Code of Criminal Procedure. Hence, the Trial Court has rightly awarded maintenance and the same does not warrant any interference by this Court. He further submitted that even assuming that the



divorce was granted on the ground of desertion, the respondent is entitled to claim maintenance. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2019 (6) CTC 340** in the case of ***Dr.Swapan Kumar Banerjee Vs. State of West Bengal and another.***

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The points for consideration in this revision is as follows :

(i)Whether the respondent is entitled to maintenance when the decree of divorce was granted on the ground of desertion ?

(ii)Whether the respondent is entitled to maintenance even after the petitioner obtained a decree of divorce on the ground of desertion ?

(iii)Whether the respondent is entitled to maintenance when she herself had committed cruelty against the petitioner and the decree of divorce was granted on the ground of cruelty ?

8. Admittedly, the respondent is the wife of the petitioner herein. After giving birth to a male child, misunderstandings arose between the parties, and the petitioner filed a petition for divorce on the ground of cruelty and desertion. After a full-fledged trial, the Trial Court granted a decree of divorce



on the ground of cruelty and desertion. Aggrieved by the same, the respondent preferred an appeal. The Appellate Court, while modifying the decree of divorce, set aside the finding insofar as the ground of desertion is concerned and confirmed the decree of divorce only on the ground of cruelty. Aggrieved by the same, the respondent preferred an appeal, which is pending before this Court C.M.S.A. No.14 of 2015. At this juncture, it is relevant to extract the provision under Section 125(4) of the Code of Criminal Procedure, which reads as follows :

“Section 125(4) of the Code of Criminal Procedure – 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.”

9. Thus, it is clear that without any sufficient reason, if the wife refused to live with her husband, she is not entitled to any maintenance. In this regard, the learned counsel relied upon the Judgment of the the Hon’ble Supreme Court of India in the case of **Dr.Swapan Kumar Banerjee Vs. State of West Bengal and another**, reported in **2019 (6) CTC 340**, wherein the Hon’ble Supreme Court of India held as follows :

“7. No doubt, as urged by Mr.Debal Banerjee, Explanation II to Section 125 of the Cr.P.C. by deeming fiction includes a



divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 of the Cr.P.C. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a Decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr. Debal Banerjee”.

10. Once the relationship of marriage comes to an end, the woman is obviously not under any obligation to live with her former husband. Even after divorce wife being treated as wife can only be read for the limited purpose for grant of maintenance and it cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. Therefore, though the decree of divorce was granted on the ground of desertion, the wife is also entitled to maintenance from her former husband. Further, the definition of



“wife” under Section 125 of Code of Criminal Procedure includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. Therefore, under Section 125 of Cr.P.C, the respondent can be construed as wife and she is entitled to claim maintenance. That apart, though the Trial Court granted a decree of divorce on the ground of desertion, the Appellate Court set aside the findings with regard to desertion and confirmed the decree of divorce only on the ground of cruelty. Therefore, Section 125(4) of Code of Criminal Procedure is not applicable to the case on hand.

11. Further, the learned counsel appearing for the petitioner vehemently contended that the respondent, on her own, committed cruelty against the petitioner and as such, she is not entitled to claim maintenance. As stated supra, though the divorcee can be construed as wife, she is eligible for maintenance. Therefore, though the petitioner was granted a decree of divorce on the ground of cruelty committed by the respondent, she is entitled to claim maintenance. Hence, the Trial Court rightly awarded maintenance. Insofar as the quantum of maintenance is concerned, it is quite reasonable, since the petitioner was working as a Professor in Annamalai University and is receiving a reasonable amount of pension.

12. In view of the above, this Court finds no infirmity or illegality in the Judgment passed in M.C.No.31 of 2016 dated 01.02.2020 on the file of the



Family Court, Salem. Accordingly, this Criminal Revision Case Stands dismissed. The petitioner is directed to pay the arrears of maintenance, if any, within a period of four weeks from the date of receipt of a copy of this order. If the petitioner fails to pay the maintenance as directed, the respondent is at liberty to approach the Trial Court by filing an appropriate Execution Petition.

01-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

LPP

To

The Judge,
Family Court,
Salem.



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G.K.ILANTHIRAIYAN J.

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