

(1944) 04 MAD CK 0015
In the Madras High Court

Kurma Pullamma

APPELLANT

Vs

Kurma Thatalingam alias Raju

RESPONDENT

Date of Decision : 20-04-1944

Acts Referred:

Citation : AIR 1945 Mad 44 : (1944) 57 LW 492

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—This is a petition by the wife against the order dismissing her petition filed u/s 488, Criminal P.C. The Magistrate has found that there was no cruelty on the part of the husband and he also found that there was no neglect. The husband appears to be living with his parents and there had not been much of cordiality between the parents and the petitioner with the result that she left the house and has not returned to the husband's. After waiting for some years the husband has married a second wife. He offered to take back the petitioner but she refused to go and live with him. Hence the Magistrate dismissed the application.

2. I see no reason to interfere with the finding on the facts by the Magistrate that there was no cruelty or neglect. It is urged however for the petitioner that the offer of the husband to take her back ought not to have been accepted as a bona fide one and reliance is placed for this on the decision in Sundarammal Vs. Palaniandi Mudali, . But that was a case in which there was evidence that the husband was guilty of having ill-treated the wife and it was the apprehension of physical ill-treatment that made her refuse to his offer. In this case, there is absolutely nothing to indicate that the wife received any physical ill-treatment at the hands of her husband. It is only incompatibility of temperament which prevented the wife from living amicably with her husband's parents that resulted in her leaving her husband's house. So long as the husband is not guilty of any cruelty or of neglect she is bound to go and live with him. I, therefore, do not think I will be justified in ordering maintenance to be paid to her. The mere fact

that the husband has taken a second wife and that too after waiting for several years and after the first wife refused to join him cannot be said to amount to cruelty. The petition is accordingly dismissed.