

(1938) 12 MAD CK 0026
In the Madras High Court

Sundarammal

APPELLANT

Vs

Palaniandi Mudali

RESPONDENT

Date of Decision : 14-12-1938

Acts Referred:

Citation : AIR 1940 Mad 292 : (1940) 51 LW 204 : (1940) 1 MLJ 171

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is a petition arising but of an application for maintenance by a wife against her husband. The marriage is admitted and the maintenance is sought not only for the petitioner herself but also for her child aged about two years. The unfortunate feature of this case is that while this child was in the womb, the petitioner had an attack of small-pox which left her more or less a physical wreck and made her completely blind with the result that she is absolutely helpless and unable to earn anything by her own exertions, and indeed she requires assistance even for ordinary purposes. The learned Magistrate appears to have ignored altogether the claim of the child whose right to get maintenance is not and cannot be denied, because it is not pretended that the counter-petitioner ever gave anything for the maintenance of the child or that the child was living with him. So far as the child is concerned, it is obvious that the order of the Magistrate dismissing the petition entirely cannot be sustained.

2. As regards the petitioner herself, she did give as a reason for her refusal to accept the belated offer of the counter-petitioner to take her back that she was afraid of farther ill-treatment. The learned Magistrate appears to have thought that this cannot be regarded as a valid ground for the refusal to accept the offer. He says: "To me this ground of her refusal appears as no valid ground." This is obviously wrong because the ground would be certainly sufficient ground or as the Section has it "just ground" for the refusal. A wife is not bound to return to her husband and live with him if really she has reasonable apprehension of

physical ill-treatment. The learned Magistrate's final decision appears to have been vitiated by this wrong view of the law on the subject of what constitutes a just ground for a wife's refusal to live with her husband. No doubt in one place he says vaguely that he does not find any neglect on the part of the counter-petitioner, because the counter-petitioner's mother begged for her daughter's welfare, but that is not at all conclusive on the point. It may be that the actual begging was due either to actual want or to the belief in the efficacy of begging as a cure for the blindness. But there can be no doubt in this case that there was a neglect by the counter-petitioner to maintain the petitioner for some time past. The counter-petitioner has married a second wife ; and though this is not a just ground for the first wife's refusal to live with him, that is a factor to be taken into account in considering whether the offer is really bona fide or not. On the whole, it seems to me as if the petitioner had established satisfactorily her claim to maintenance for herself and as regards the claim on behalf of the child, there is really no defence to it. In the circumstances therefore the order of the Magistrate dismissing the petition is set aside. I am of opinion that a maintenance of Rs. 6 a month to the petitioner and Rs. 2 a month for her child would be reasonable maintenance and there will be an order directing the counter-petitioner, the respondent in this Court, to pay maintenance allowance at these rates to the petitioner with effect from the date of the order of the Sub-divisional Magistrate, i.e. 12th August 1938.