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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17-11-2026

CORAM

THE HON'BLE DR. JUSTICE P. MURUGAN

CMA(MD) No. 1053 of 2026

CNR:{HCMD011009832026}

Case QR

AND

CMP(MD) No. 10993 of 2026

Ezekiel Abishek

..Appellant/Petitioner

Vs

Shobana

..Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under section 55 of Divorce Act, 1869 to *set aside* the order passed in Para No. 1 and 2 of the fair and decretal order dated 22.04.2026 passed by the II Additional District Judge, Trichy in I.D.O.P.No. 148 of 2024.

For Petitioner : Mr. S. Yogeswaran

For Respondent : M/s. A. Vijayalakshmi

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JUDGMENT

The successful litigant/husband in the divorce case, has come up with the present appeal challenging only the limited aspect of the order passed by the II Additional District Judge, Tiruchirappalli, in I.D.O.P. No. 148 of 2024, dated 22.04.2026, while granting a decree of divorce in favour of the husband on the ground of cruelty under section 10(1)(x) of the Divorce Act, 1869 the Trial Court directed the husband to pay a sum of Rs.15,000/- per month towards the maintenance of his minor daughter, Danika.

2. The grounds and contention of the appellant, who was the petitioner before the Trial Court is that he has filed the divorce petition, which was granted, but directed him to pay a sum of Rs.15,000/- per month towards the maintenance of the minor child and the same is under challenge. Hence, the present appeal has been filed seeking to *set aside* the directions in Paragraph Nos. 1 and 2 of the result portion of the impugned order passed by the Trial Court.

3. The grounds raised by the appellant is that, in the divorce petition filed by the husband, the wife had not filed any separate

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petition for maintenance either under section 125 of the Code of Criminal Procedure, 1973, or under sections 36 and 37 of the Divorce Act, 1869. Section 125 of the Code of Criminal Procedure deals with the order for maintenance of wives, children and parents. section 36 of the Divorce Act deals with alimony, *pendent lite*, whereas Section 37 of the Divorce Act deals with the power of the Court to grant permanent alimony.

4. It is the strong contention of the appellant that proceedings under section 125 of the Code of Criminal Procedure have to be initiated separately. Further, Section 36 of the Divorce Act says about alimony *pendent lite* and litigation expenses during the pendency of the proceedings, upon an application being filed by the wife. Section 37 of the Divorce Act says for the grant of permanent alimony where a decree of dissolution of marriage is obtained by the wife.

5. In the present appeal, neither under section 125 of the Code of Criminal Procedure nor under section 36 of the Divorce Act petition has been filed by the wife. As far as section 37 of the Divorce Act is concerned, it is to be considered while disposing the divorce petition filed by the wife and divorce granted. In such

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circumstances, the divorced wife may not be left with empty hand, and the Court may consider granting permanent alimony by directing the husband to pay some amount as alimony. However, no such divorce petition was filed by the wife.

6. The judgment of the Hon'ble Supreme Court in ***Rajnesh v. Neha and Anr.***, in **(2021) 2 SCC 324**, held that, in the maintenance proceedings, the parties should be directed to file affidavits disclosing their assets and liabilities, so as to enable the Court to form an opinion to award maintenance. In the present case, no such direction was given and there was no assets and liabilities of the parties was filed by the wife. Therefore, the direction issued by the Trial Court directing the appellant to pay a sum of Rs.15,000/- per month towards the maintenance of the minor child is erroneous. Hence, the appellant has filed the present appeal to *set aside* the directions in Paragraph Nos. 1 and 2 at the result portion of the impugned order. Even in the divorce case filed by the husband no maintenance to the child is permitted as permanent alimony, and the said alimony is only to the wife.

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7. The learned counsel appearing for the respondent/wife contended that, out of the marriage between the parties, a female child was born. Though the Trial Court granted a decree of divorce, which has not been challenged by the wife but the direction issued by the Trial Court to pay monthly maintenance to the minor child has to be considered in the facts and circumstances of the case. It is further submitted that the mother is now taking care of the minor child and, therefore, the direction issued by the Trial Court does not warrant any interference.

8. Heard both sides, considered the submissions raised by both sides and perused the records.

9. The point for determination is as to whether the direction, directing the husband to pay a sum of Rs.15,000/- per month towards the maintenance of his minor daughter, Danika, in the divorce petition filed by the husband, wherein a decree of divorce was granted in his favour, is correct as per the legal provisions under section 125 of the Code of Criminal Procedure and sections 36 and 37 of the Divorce Act, 1869?

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10. The husband approached the Trial Court seeking divorce on the ground of cruelty. Both the parties to the case are Christians, and there is no dispute. Upon appreciation of the evidence available on record, the Trial Court granted a decree of divorce on the ground of cruelty. The wife was examined as R.W.1 before the Trial Court. As per the impugned order, the wife also stated that she seeks divorce. On perusal of the evidence of R.W.1, when a question was posed her as to whether she had any objection to the grant of divorce in favour of the husband, she answered no.

11. As per section 47 of the Divorce Act, there cannot be any collusion between the parties for a decree of dissolution of marriage or nullity of marriage or judicial separation. Though the divorce petition was filed by the husband, during the course of examination of the parties, the wife had answered that she had no objection to grant of a decree of divorce in favour of the husband. However, it may not amount to collusion between the parties, where she denied the entire allegations and facts narrated by the husband in his pleadings.

12. Further the decree of divorce was granted on 22.04.2026. The wife did not file an appeal challenging the said decree.

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However, the wife had remarried another person on 28.05.2026. The present appeal has been presented before this Court on 21.07.2026. Thus, the appeal has been presented within 90 days from the date of the decree passed by the Trial Court. As per the limitation aspect, an appeal challenging a decree passed under the Divorce Act is required to be preferred within 90 days. During the pendency of an appeal challenging a decree of divorce, remarriage by either of the parties would not be valid. However, the facts of the present and the date and events briefly narrated says that the wife got remarried on 28.05.2026 as stated by the appellant in the grounds of appeal, which is not disputed. Anyhow we are dealing with the impugned order of the Court granting maintenance to the minor child in the divorce petition filed by the husband, which was granted. The question as to whether it is valid or not is to be answered.

13. There was no specific claim made by the wife before the Trial Court seeking an order of maintenance for the minor child. When the Court intend to order maintenance to the wife that for permanent alimony the wife ought to have sought for divorce by filing petition. In this case the wife did not file any petition for divorce, but that petition was filed by the husband which was

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granted. In view of the provisions of *section 37 of the Divorce Act*, coupled with the principles laid down by the Hon'ble Supreme Court in ***Rajnesh (Supra)***, this Court is of the view that the Trial Court failed to appreciate the matter in the manner known to law and taking a sympathy and equity ordered the husband to pay a sum of Rs.15,000/- per month towards the maintenance of his minor daughter is erroneous. Thereby, such a finding or direction is liable to be *set aside*. It is clear that the decree of divorce granted by the Trial Court is correct. Therefore, the appeal is liable to be allowed and the Trial Court order is *set aside* to that extent. The conditions mentioned in the impugned order in paragraph Nos. 1 and 2 directing the husband to pay a sum of Rs.15,000/- per month towards the maintenance of his minor daughter, in the divorce petition filed by him, is not sustainable, and it is set aside. The point is answered in favour to the husband.

14. Considering the facts and circumstances of the case, there shall be no order as to cost.

15. In the result,

(i) This Civil Miscellaneous Appeal is allowed;

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(ii) The directions in Paragraph Nos. 1 and 2 of the result portion of the order passed by the II Additional District Judge, Tiruchirappalli, in I.D.O.P. No.148 of 2024, dated 22.04.2026, directing the father to pay a sum of Rs.15,000/- per month towards the maintenance of his minor daughter, Danika, is hereby *set aside;* and

(iii) No cost.

16. Consequently connected miscellaneous petition stands closed.

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

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To:

1. The II Additional District Judge,
   Trichy.

2. The Section Officer,
   VR Section,
   Madurai Bench of Madras High Court.

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