



*Crl.R.C(MD)No.1161 of 2022*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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Reserved on : 24.07.2023

Pronounced on : 19.10.2023

**CORAM :**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**Crl.R.C(MD)No.1161 of 2022**

**and**

**Crl.M.P(MD)No.14623 of 2022**

Suresh Kumar

.. Petitioner / Respondent

Vs.

1. Minor.Thanisha

2. Minor Nathisha

.. Respondents / Claimants

[Both respondents are  
represented by their mother/  
natural guardian Mahalakshmi]

**PRAYER:** Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 17.10.2022 passed in M.C.No.24 of 2019 on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District and set aside the same.

For Petitioner : Mr.R.Anand

For Respondents : Ms.N.Rekha



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## **ORDER**

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The petitioner, who is the father of the respondents, filed this revision challenging the impugned maintenance order granted in favour of the respondents to the tune of Rs.20,000/- as maintenance dated 17.10.2022 in M.C.No.24 of 2019 on the file of the learned Judicial Magistrate, Paramakudi.

2. The petitioner earlier married one Mahalakshmi on 06.12.2009. Out of the wedlock, the respondents 1 and 2 were born. The petitioner is working as a professor in the Annamalai Distance Education Institute, Ramanathapuram. Due to the strained relationship between the said Mahalakshmi and the petitioner, the said Mahalakshmi filed the H.M.O.P.No. 43 of 2014 for divorce and the same was allowed on 20.11.2017. The petitioner and the said Mahalakshmi, namely, mother of the respondents is working as a teacher in a Government-aided school. Eventhough she is working as a teacher, the income is not sufficient to maintain the two female children. Hence, she filed the above maintenance case for claiming maintenance of Rs.30,000/- to the respondents collectively.



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**3.** The petitioner herein filed the counter stating that due to the conduct of the said Mahalakshmi, the marriage ended in divorce in the said H.M.O.P.No.43 of 2014. The allegation made in this petition is not correct. After divorce, the petitioner entered into another marriage and through the second marriage, he got two children. Therefore, he is duty-bound to maintain that family also. In view of the salary earn by the mother of the respondents as a teacher, which is comparatively higher than the salary received by this petitioner, the claim of maintenance by the respondents is not maintainable.

**4.** The learned trial Judge, after considering the evidence of PW.1 and PW.2 and the respondents, Ex.P1 to Ex.P9 and Ex.D1 to Ex.D4 and considering the salary of the petitioner and also taken into account the salary of the mother of the respondents, granted Rs.24,000/- to the respondents. Challenging the said order, the petitioner preferred this revision.

**5.** The learned counsel for the petitioner reiterated the grounds stated in the memorandum of grounds and specifically submitted that after the divorce on 20.11.2017, he entered into second marriage and through the



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second marriage, he got two children and he is duty-bound to maintain that family also and hence, the award of the maintenance to the tune of Rs.24,000/- is high, more particularly, in the said situation of the remarriage. He further submitted that the first respondent is working as a teacher and she also earns equal to the salary of the petitioner. Further, he is always making the payment of the school fees etc., to the respondents 1 and 2.

6. Considering the above circumstances, the order of the quantum of maintenance granted to the respondents is not in accordance with law.

7. The learned counsel for the respondents submitted that the mother of the respondents, due to the conduct of the petitioner, filed the divorce petition and hence there is no justification to deny his liability to maintain his children. Further, the case of the respondents that though he entered into remarriage, he is duty-bound to maintain the children born through the second marriage, amounts to the offence of alienation of the affection towards the children born through the first marriage. It is the duty of the petitioner to make arrangements for the welfare of the children born through the first wife and then only, he has the right to enter into remarriage and



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hence, he caused injustice to both the respondents as well as the children born through the second marriage. He is hale and healthy and hence he must owe the responsibility as per the order of both the Courts below. Hence, the learned counsel for the respondents seeks dismissal of this revision.

**8.** This Court has considered the rival submissions made by both parties and perused the records furnished by both parties.

**9.** The relationship of the respondents is never in dispute. The respondents are the children of the petitioner. The said relationship is to continue till his lifetime. In the said circumstances, it is the duty of the petitioner to maintain the children. The petitioner, knowing the fact that he had already two female children entered into remarriage. Hence, it is his duty to provide the monitory support to the female children, then only, he should have entered into remarriage. As rightly pointed out by the learned counsel for the respondents that without taking care of his children, he entered into remarriage and got two children through his remarriage amounts to the alienation of the affection towards the respondents.



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**10.** Further, as per the evidence available on record, it is seen that the petitioner is earning more than Rs.70,000/-. In the said circumstances, the trial Court awarded only Rs.24,000/-. Therefore, the trial Court, after considering the income of the mother of the respondents, granted only Rs.24,000/- as maintenance for both children. Hence, this Court finds no reason to interfere in the order of the trial Court.

**11.** Strong reliance was placed by the learned counsel for the petitioner upon the judgement reported in **2021(2)SCC 324**, wherein the Hon'ble Supreme Court has held that both are bound to maintain the children. The trial Judge, after considering the salary of the mother of the respondents and the petitioner, assumes the equitable jurisdiction, granted only Rs.24,000/-. The amount of maintenance has been granted not only considering the concept of the working capacity but also the circumstances in which the children are to be brought up under the quality of education and quality of life. In this case, both are educated and both are working as teacher in various capacities and in the said circumstances, the children, namely, the respondents herein should have meaningful development in consonance with Article 21 of the Constitution of India and hence, the amount in addition to



the earnings of the respondents' mother is necessary to bring up the two female children in the right way. Even applying the following principle laid down by the Hon'ble Supreme Court in **2021 (2) SCC 324**, the order passed by the learned trial Judge need not be interfered.

*85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.*

**(a) Age and employment of parties**

*86. In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependant wife to get an easy entry into the work-force after a break of several years.*

**(b) Right to residence**

*87. Section 17 of the D.V. Act grants an aggrieved woman the right to live in the "shared household". Section 2(s) defines "shared household" to include the household where the aggrieved woman lived at any stage of the domestic relationship; or the*



*household owned and rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the Respondent is a member.*

**88.** *The right of a woman to reside in a "shared household" defined Under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in Satish Chander Ahuja v. Sneha Ahuja<sup>11</sup> (supra) held that "shared household" referred to in Section 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed, or at any stage lived in a domestic relationship. The living of the aggrieved woman in the shared household must have a degree of permanence. A mere fleeting or casual living at different places would not constitute a "shared household". It is important to consider the intention of the parties, nature of living, and nature of the household, to determine whether the premises is a "shared household". Section 2(s) read with Sections 17 and 19 of the D.V. Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.*

**89.** *Section 19 (1)(f) of the D.V. Act provides that the Magistrate may pass a residence order inter alia directing the Respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the*



*Magistrate may direct the Respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.*

***(c) Where wife is earning some income***

**90.** *The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.*

**90.1.** *In Shailja and Anr. v. Khobbanna, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.*

**90.2.** *In Sunita Kachwaha and Ors. v. Anil Kachwaha, the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.*

**90.3.** *The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale while relying upon the judgment in Sunita Kachwaha (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.*

**90.4.** *An able-bodied husband must be presumed to be capable of earning sufficient money to maintain*



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*his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Prakash Bodhraj v. Shila Rani Chander Prakash. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.*

*90.5. This Court in Shamima Farooqui v. Shahid Khan cited the judgment in Chander Prakash (supra) with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.*

***(d) Maintenance of minor children***

*91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extra-curricular/coaching classes, and not an overly extravagant amount which may be claimed.*

*92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.*

***(e) Serious disability or ill health***

*93. Serious disability or ill health of a spouse, child/children from the marriage/dependant relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.*



12. Further three Judges Bench of the Hon'ble Supreme Court in the

judgment reported in **2019(12)SCC303** held as follows:

*“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”*



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**13.** In view of the above principles laid down by the Hon'ble Supreme Court of India, there is no reason to interfere with the order of the trial Court.

Hence, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

**19.10.2023**

NCC :Yes/No  
Index :Yes/No  
Internet :Yes/No  
PJJ

To

1. The Judicial Magistrate,  
Paramakudi,  
Ramanathapuram District.
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
3. The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.K.RAMAKRISHNAN, J.**

PJL

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