



C.R.P.(PD).No.4204 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 21.10.2024

CORAM :

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(PD).No.4204 of 2024  
and C.M.P.No.23304 of 2024

G.Sam William Carter

.. Petitioner

**Versus**

S.Mariya

.. Respondent

**Prayer :** Civil Revision Petition filed under Article 227 of the Constitution of India to allow the Civil Revision Petition thereby set aside the fair order and decretal order, dated 7th day of August, 2024 made in I.A.No.44 of 2021 in D.V.O.P.No.128 of 2019 on the file of the learned Principal District Judge, Kancheepuram.

For Petitioner : Mr.A.R.Nixon

**ORDER**

This Civil Revision Petition arises against the order of the learned Principal District Judge at Kancheepuram in I.A.No.44 of 2021 in D.V.O.P.No.128 of 2019, dated 07.08.2024.



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2. The civil revision petitioner is the husband. The respondent/wife initiated D.V.O.P.No.128 of 2019 seeking for divorce invoking Section 10(1)(x) of the Indian Divorce Act, 1869. Pending the litigation, she took out an application in I.A.No.44 of 2021 seeking for interim maintenance of Rs.30,000/- for the children and to pay the amount of Rs.17,68,500/- which had been expended towards the children's education. The said application, after receipt of a counter-affidavit, came to be allowed. Hence, this Civil Revision Petition.

3. Heard Mr.A.R.Nixon, learned Counsel for the petitioner.

4. Mr.A.R.Nixon draws my attention to the order passed by this Court in C.R.P.(PD).No.2449 of 2018, dated 25.03.2019 to urge that originally, the wife filed O.P.No.4770 of 2015 seeking for divorce on the file of the VII Additional Family Court at Chennai. He points out that the parties are residents of Manapakkam which is outside the jurisdiction of the Family Court at Chennai and therefore, he filed an application for objecting the jurisdiction of the learned Family Judge to try the issue. He adds that after



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I.A.No.1178 of 2017 in O.P.No.4770 of 2015 was directed to be disposed of by this Court, the respondent/wife withdrew the Original Petition and filed a fresh proceeding before the District and Sessions Court at Kancheepuram.

5. He states that the children born from the wedlock, who are aged about 16 and 19 respectively, have the habit of abusing the father and in fact, had assaulted him on a couple of occasions and it was also videographed. Apart from the submission, on the primary submission on the maintenance, he states that the husband paid fees for the children which had unfortunately not been accounted for by the learned District Judge. He further points out that the affidavit of assets and liabilities that the wife has to file in terms of the judgment of the Supreme Court in ***Rajnish Vs. Neha and Anr., (2021) 2 SCC 324***, was not filed and the learned District Judge ignored this fact and ordered the application. He argues that had the amount paid by the civil revision petitioner, had been accounted for by the learned District Judge, perhaps, he would have come to a conclusion that the husband has to pay a sum of Rs.8,84,250/- and Rs.15,000/- per month towards educational expenses of the children.



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6. I have carefully considered the submissions of Mr.A.R.Nixon.

7. There is no dispute that the petitioner entered into holy matrimony with the respondent on 08.07.2022 at Cuddalore. Both the parties are employed by the Police Department in the state of Tamil Nadu. The wife is the Sub-Inspector of Police and the husband is a Head Constable. The wedlock produced two children, a male and a female. The son was admitted in S.R.V. Boys School at Namakkal and the daughter was admitted in Sri Chaitanya Technology School at Manapakkam.

8. On account of the fact that the parties separated, the wife pleads that the husband did not pay the school fees. She urged before the Court in the Interlocutory Application that she bore the entire expenses for the children. She quantified the figure at Rs.17,68,500/- and demanded the husband to make good the payment made by her. In addition, she claimed Rs.30,000/- per month towards the educational expenses. The husband claimed that his salary itself is Rs.30,000/- and he is not in a position to make the payment as sought for. He filed a counter-affidavit pleading that he is paying Rs.11,500/- towards E.M.I for the loan availed by him in



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addition to Rs.7,500/- as house rent and Rs.5,000/- for his medical expenses.

9. If the figures that were given by the husband are added up, out of his salary of Rs.30,000/-, he seems to be spending a sum of Rs.24,000/- only on paying E.M.Is, house rent and medicines. He must be the husband, I feel, who is a financial wizard to live with only Rs.6,000/- in his hands, especially, when he is carrying out his onerous duties of being a Head Constable. Be that as it may, the wife has shown that she spent a sum of Rs.17,68,500/- to bring up the children. The very judgment that Mr.A.R.Nixon relies upon in ***Rajnesh***'s case (cited *supra*) points out that it is the sacrosanct duty of a husband to maintain his wife and children. This duty continues even if the wife is educated and is capable of maintaining herself.

10. Insofar as the plea of Mr.A.R.Nixon that the affidavit of assets and liabilities was not filed by the wife is concerned, a perusal of the Section 36 of the Indian Divorce Act, 1869 makes it clear that if the spouse is unable to maintain herself, she can file an application for interim



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maintenance. Section 36 is wide enough in sweep to cover the maintenance of children also. This is the interpretation that is given to Section 24 of the Hindu Marriage Act, 1955 and for the mere fact that the parties are Christians, it does not mean that the father is not liable to maintain the children when Section 36 is invoked for the said purpose. In any event, the learned District Judge is entitled to rely upon Section 151 of the Code of Civil Procedure to order interim maintenance even if there is no specific provision under the Indian Divorce Act, 1869.

11. With respect to the allegation that the affidavit of assets was not filed, the answer is the relief that is sought for is for maintaining the children and not for the wife herself. The wife, being a Sub-Inspector of Police, did not seek for any maintenance from the husband. She only wants the husband to perform his duty as the father of the two children. Therefore, the fact that the wife did not file an affidavit of assets and liabilities does not make any difference when the Court is dealing with an application for maintenance of the children.



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12. Insofar as the plea that the amounts paid by the husband were not accounted for, a perusal of the order shows that the husband did not produce any evidence before the Court in order to substantiate that he did make any payments to either Sri Chaitanya Technology School or to S.R.V. Boys School, Namakkal. In the absence of any proof, I cannot accept the plea of Mr.A.R.Nixon.

13. Apart from that, the learned Judge did not direct the husband to pay the entire amount. He came to the conclusion that the husband and wife have to divide the sums involved equally. Though the wife claimed a sum of Rs.17,68,500/- and Rs.30,000/- towards maintenance, the learned District Judge only ordered the husband to pay Rs.8,84,250/- and Rs.15,000/- towards educational expenses. That is to say that the learned Judge divided the amounts into two equal halves and only ordered the husband to pay his share of the liability towards bringing up the children. In fact, the mother, being a working woman, would have undergone great difficulties in order to bring up the children which has unfortunately not been accounted by the learned Judge.



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14. I do not find the order of the learned Judge to be unreasonable or arbitrary or without jurisdiction. Hence, this Civil Revision Petition is dismissed. In case, an Execution Petition is filed for the entire amount and the husband is able to show that he bound to certain amounts for payments towards school, I am sure that the learned District Judge, at the time of dealing with the Execution Petition, will permit the husband to account for the same. No costs. Consequently, connected miscellaneous petition is closed.

21.10.2024

Index : yes/no  
Speaking order/Non-speaking order  
Neutral Citation : yes/no  
grs

To

The Principal District Judge,  
Kancheepuram.



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**V.LAKSHMINARAYANAN, J.**

grs

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