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Crl.R.C.Nos.1429 of 2024 & 2273 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2025

Coram:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Crl.R.C.No.1429 of 2024 &  
Crl.R.C.No.2273 of 2024 & Crl.M.P.No.17707 of 2024

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**Crl.R.C.No.1429 of 2024**

- 1.Mrs.B.Mageswari
- 2.Minor.E.G.Mukesh
- 3.Minor.E.G.Shruthi

.. Petitioners

(All are residing at  
No.12, Sundaram Nagar 2nd Street,  
Kolathr, Chennai - 600 099)

Vs.

P.Eswaramoorthy

.. Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C., 1973, to call for records and set aside the judgment passed in M.C.No.107 of 2022, dated 29.01.2024 on the file of the learned 1st Additional Family Court, Chennai.

For petitioners : Mr.K.Shivakumar

For respondent : Mr.M.Roshan Atiq

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**Crl.R.C.No.2273 of 2024**

P.Eswaramoorthy

.. Petitioner

Vs.

1.Mrs.B.Mageswari  
2.Minor.E.G.Mukesh  
3.Minor.E.G.Shruthi

.. Respondents

(2nd and third respondents are rep. by their  
mother and natural guardian 1st respondent)

All are residing at  
No.12, Sundaram Nagar, 2nd Street,  
Kolathur, Chennai - 600 009.

Criminal Revision Case filed under Section 438 r/w 442 of Cr.P.C., 1973, to set aside the impugned order dated 29.01.2024 in M.C.No.107 of 2022, on the file of the 1st Additional Family Court, at Chennai passed in M.C.No.107 of 2022, dated 29.01.2024 on the file of the learned 1st Additional Family Court, Chennai.

For petitioners : Mr.M.Roshan Atiq

For respondent : Mr.K.Shivakumar



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## COMMON ORDER

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Heard the learned counsel on either side and perused the materials available on record.

2. Both the revisions arise from the order passed by the learned 1st Additional Family Judge, Chennai, in a maintenance case in M.C. No. 107 of 2022. Hence, they are taken up together for consideration and disposed of by way of this common order. Crl.R.C.No.2273 of 2024 has been preferred by the husband, challenging the order directing him to pay maintenance to the wife and minor children. Crl.R.C.No.1429 of 2024 has been filed by the wife and children seeking enhancement of the maintenance awarded.

3. For the sake of convenience, the husband will hereinafter be referred to as the "petitioner," and the wife and children will be referred to as the "respondents."

4. The marriage between the husband and the wife was solemnized on 18.11.2004. Out of their wedlock, two children, namely the second and third respondents, were born. As disputes had arisen between the parties, the wife left the matrimonial home. The wife filed a petition seeking maintenance for herself and the children, contending that she was unable to maintain herself and the children and that the husband, being financially well-off, had a duty to support them. The



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learned Judge, upon considering the pleadings and evidence, awarded maintenance of Rs.25,000/- per month to the wife, Rs.20,000/- to the minor son, and Rs.15,000/- to the minor daughter.

5. The learned counsel for the petitioner / husband contended that the wife voluntarily deserted the matrimonial home without any justifiable reason, disentitling her from claiming maintenance. It was argued that the maintenance awarded was excessive and placed an undue financial burden on the husband. The learned counsel further contended that the petitioner/husband was already providing for the educational expenses of the children and that the maintenance should be reconsidered. It was also argued that the wife had, on multiple occasions, refused attempts at reconciliation and therefore should not be entitled to any monetary support. Additionally, it was submitted that the husband had extended financial support on previous occasions and had not abdicated his responsibility toward his children, but a structured monthly maintenance of such a high amount was unjustified. The husband also asserted that the wife was residing separately without sufficient cause and was intentionally prolonging the dispute, making it impossible to resume normal marital relations.

6. Per contra, the learned counsel for the respondents / wife and children argued that there was no conclusive judicial determination proving that the wife left



the matrimonial home voluntarily. It was submitted that despite attempts for reconciliation, the husband failed to take any initiative to resume cohabitation. The wife, being unemployed, had no independent source of income, and the children, being minors, were entirely dependent on their father. It was further argued that the husband's financial condition permitted him to provide for his family, and he could not escape from his obligation merely by citing allegations of desertion. The learned counsel highlighted that the wife had approached the Court seeking restitution of conjugal rights, which clearly established that she had not left the matrimonial home voluntarily. The expenses of raising two minor children, coupled with the increasing cost of education and daily living expenses, warranted an enhancement rather than a reduction of maintenance. Furthermore, it was emphasized that denying maintenance to the wife would not only go against the settled principles of law but would also be unjust and inequitable in the given circumstances.

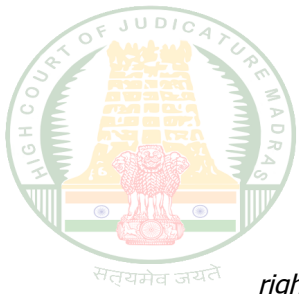
7. The learned 1st Additional Family Judge carefully examined the evidence and submissions before determining the quantum of maintenance in the order. The learned Judge found that the husband failed to establish that the wife had left the matrimonial home voluntarily. The absence of any judicial determination in his favour regarding desertion weakened his claim. Additionally, the wife's petition for restitution of conjugal rights was taken as an indication that she did not leave without cause. The order also considered that the wife was not employed and lacked an independent source of income, while the children were minors, engaged in their



studies, and wholly dependent on their father for sustenance. The learned Judge also noted that mere allegations of desertion do not absolve the husband of his statutory obligation under Section 125 Cr.P.C.

8. The learned Judge took into account the financial capacity of the husband, who was working as a Senior Civil Judge, noting that he was in stable employment and earning more than Rs. 1,00,000/- per month. The maintenance of Rs.25,000/- to the wife, Rs.20,000/- to the son, and Rs.15,000/- to the daughter was considered proportionate and justified given the financial needs of the dependents and the husband's earning potential.

9. At the outset, this Court takes note of the fact that the relationship between the parties is undisputed. The claim of voluntary desertion by the wife is not supported by any judicial order, and mere allegations in this regard cannot be a ground to deny maintenance. The records indicate that the wife filed a petition for restitution of conjugal rights, further negating the claim that she left the matrimonial home without cause. It is also to be noted that even the mere failure to abide by a decree for restitution of conjugal rights will not, by itself, disentitle the wife from receiving maintenance. At this juncture, it would be useful to refer to the judgment of the Hon'ble Supreme Court in the case of **Rina Kumari V. Dinesh Kumar Mahto [(2025) 1 MLJ (Crl) 475]**, has held as follows:-

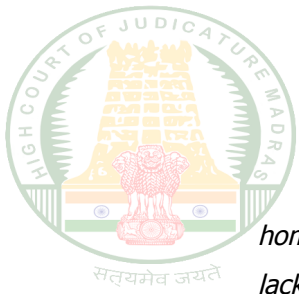


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"35. Viewed thus, the findings in the proceedings for restitution of conjugal rights, which were partly uncontested as Reena did not appear before the Family Court to adduce evidence or advance her case after filing her written statement, did not clinch the issue and the High Court ought not to have given such undue weightage to the said judgment and the findings therein. In the process, certain crucial factors were overlooked. Particularly, the fact that the witnesses who appeared on behalf of Reena in the Section 125 Cr.P.C. proceedings were not even cross-examined. It was clear therefrom that Dinesh did not even contest or rebut what they had stated. The fact that Reena was fully dependent on her brother was thus admitted. Further, documents were placed on record in proof of Reena's abortion in January, 2015. In that regard, Dinesh's admission that he did not bear the expenditure for her treatment and her unrebutted assertion that he did not take her to the hospital or even come from Ranchi to see her were clear indicia of the pain and mental cruelty meted out to her. The fact that she was not allowed to use the toilet in the house or avail proper facilities to cook food in the matrimonial home, facts which were accepted in the restitution proceedings, are further indications of her ill-treatment.

36. Pertinently, in *Parveen Mehta vs. Inderjit Mehta* [(2002) 3 MLJ 82], this Court held that mental cruelty is a state of mind and feeling of one of the spouses due to the behavioral pattern by the other and, unlike physical cruelty, mental cruelty is difficult to establish by direct evidence. It was observed that a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on cumulatively assessing the attending facts and circumstances in which the two spouses have been living. In a case of mental cruelty, per this Court, it would not be the correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the spouse has been subjected to mental cruelty due to the conduct of the other.

37. Applying this standard, Dinesh's conduct in completely ignoring his wife, Reena, after she suffered the miscarriage of their child would have been the proverbial last straw adding to her suffering due to the ill-treatment in her matrimonial home. She, therefore, had just cause to not return to her matrimonial



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*home, despite the restitution decree. Further, the events thereafter or rather, the lack thereof, is relevant. The restitution decree came to be passed on 23.04.2022. Admittedly, there was no attempt made at reconciliation after 2017. However, having secured the said restitution decree, Dinesh did nothing! He neither sought execution of the decree under Order XXI Rule 32 CPC nor did he seek a decree of divorce under Section 13(1A)(ii) of the Hindu Marriage Act, 1955."*

Further, the financial status of the husband is an important consideration. It is an admitted fact that he is employed in a stable position and working as Senior Civil Judge and earns more than Rs. 1,00,000/- per month. His contention that the maintenance amount is excessive does not hold weight, considering the needs of the wife and two minor children. The amount awarded by the learned Judge Rs.25,000/- for the wife, Rs. 20,000/- for the son, and Rs. 15,000/- for the daughter, totalling Rs. 60,000/-, which is a reasonable sum in light of the husband's earning capacity and the cost of living.

10. The law mandates that a husband must provide financial support to his wife and children when they lack independent means of sustenance. The Hon'ble Supreme Court, in multiple precedents, has emphasized that a wife who is unable to maintain herself is entitled to maintenance. Similarly, minor children are entitled to support from their father, as their education and well-being are paramount. The financial burden on the husband, while relevant, must be balanced against his legal and moral duty to ensure the well-being of his dependents. The minor children, by virtue of their tender age, require financial security for their education, healthcare,



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and daily sustenance. In this backdrop, the maintenance amount fixed by the learned Judge is neither excessive nor arbitrary but is a well-reasoned determination based on legal principles and economic realities.

11. This Court, therefore, finds no reason to interfere with the well-considered order of the learned Judge. The revision filed by the husband challenging the maintenance order lacks merit, and the claim for enhancement of maintenance by the wife and children, does not warrant modification in the present circumstances. The quantum of maintenance awarded is just, fair, and in accordance with settled legal principles.

12. Accordingly, both the revisions Crl.R.C.No.2273 of 2024 and Crl.R.C.No.1429 of 2024 are dismissed. The maintenance order passed by the learned 1st Additional Family Judge, Chennai, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

**26.03.2025**

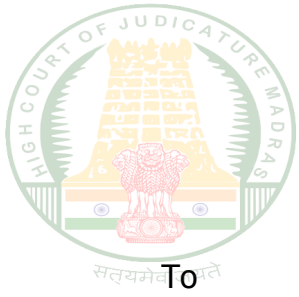
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To  
The 1st Additional Family Court,  
Chennai.



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**P.VELMURUGAN, J**

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**26.03.2025**