



Crl.Re. No.1164 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.03.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision No. 1164 of 2019
and
Crl.M.P.No.15568 of 2019

R. Murugan

.. Petitioner

Versus

1. Mahalakshmi
2. Minor M.Lingeshran
3. Minor M.Harshavarthini

.. Respondents

Criminal Revision filed under Section 397 and 401 of Cr.P.C., praying to call for records culminating in the impugned Order dated 26.08.2019 passed in M.C. No. 38 of 2018 on the file of Family Court, Dharmapuri and set aside the same.

For Petitioner : Mr. N. Suresh
For Respondents : Mr. T. Ganesan

J U D G M E N T

This Criminal Revision has been filed praying to set aside the Judgment dated 26.08.2019 passed in M.C.No.38 of 2018 on the file of the Family Court, Dharmapuri. By the said order dated 26.08.2019, the Family Court directed the revision petitioner herein to pay a sum of Rs.6,250/- per month each to the



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respondents herein from the date of filing the F.C.M.C. No. 38 of 2018 viz., on 27.03.2018. It was also directed that the maintenance amount of the respondents 2 and 3 herein/children shall be given to the first respondent/wife from 27.03.2018 till they attain majority. The amount from 27.03.2018 to July 2019 and educational expenses for the year 2018-2019 and 2019-2020 be paid within one month from the date of the order. The further maintenance amount from August 2019 onwards to be paid within 5th of next succeeding month as per English Calander Month.

2. The brief facts, which are necessary for disposal of this Criminal Revision Case, are as follows:-

2.1. The Revision Petitioner herein has filed HMOP No. 33 of 2018 before the Family Court, Dharmapuri under Section 9 of The Hindu Marriage Act, for restitution of conjugal rights. In the said petition, among other things, it was stated that the marriage between the Revision Petitioner and the first respondent herein was solemnised on 13.06.2003 at Munusamy Kavundar Marriage Hall at Kadathur. During the marriage, 8 sovereigns were given to the first respondent and 2 sovereigns of gold and house hold articles were presented to the revision petitioner herein. It is further stated that 2 years after marriage, a Hero Honda Splendor Plus, two-wheeler was presented to the



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Revision Petitioner. According to the Revision Petitioner, the marriage was consummated and two children namely the respondents 2 and 3 herein have born during the year 2004 and 2007 respectively. In the year 2013, the Revision Petitioner constructed a new house in which the first respondent along with the respondents 2 and 3 lived peacefully. However, the first respondent did not attend to the family affairs and often left the matrimonial home. In spite of mediation, she refused to come and live with the Revision Petitioner. The Revision Petitioner through his brothers and sister's-in-law demanded the first respondent to return to the matrimonial home and accordingly, she resided with the Petitioner for some time. The Petitioner also returned the watch and 2 wheeler to the First Respondent on 24.04.2016. However, on 31.05.2017 the first respondent quarrelled with the petitioner and left the matrimonial home. Therefore, the Revision Petitioner has filed the Original Petition for restitution of conjugal rights.

2.2. A counter affidavit has been filed by the First Respondent contending that after marriage, as the Revision Petitioner was without any job, the parents, sister and brother of the First Respondent supported them financially. It is with their help, the new house at Nallakutlahalli was constructed. However, the Revision Petitioner expressed his desire to marry her widowed Sister as his second wife, which was refused by the sister of the



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First Respondent as well as the First Respondent. Therefore, for about 4 years, the Revision Petitioner subjected the First Respondent to matrimonial cruelty, ill-treated her and pestered her for jewels and cash. By the passage of time, the Revision Petitioner became drunkard and did not care for the family. The children are studying in Government School at Athiyamankottai. The present petition has been filed only to avoid payment of maintenance. Accordingly, the First Respondent prayed for dismissal of the Petition seeking restitution of conjugal rights.

2.3. Apart from filing the Counter in HMOP No. 33 of 2018, the First Respondent has filed M.C. No. 38 of 2018 before the Family Court, Dharmapuri contending that the Revision Petitioner has left the First Respondent-wife and the two children in lurch without paying them any amount for their maintenance and education. The Revision Petitioner is working as a Medical Examiner in Veterinary Hospital and earns Rs.30,000/- per month. Moreover, he attends to ailing livestock and earns Rs.20,000/- per month separately. On the other hand, the First Respondent is not employed anywhere and is unable to maintain her and her two children. Therefore, she prayed to direct the Revision Petitioner to pay Rs.10,000/- per month to each of the Respondents and Rs.50,000/- for educational expenses of the Respondents 2 and 3 apart from litigation expenses.



WEB COPY2.4. On notice, a counter was filed by the Revision Petitioner contending that the First Respondent did not attend to the matrimonial chores and often deserted the matrimonial home. During May 2014 the First Respondent left the matrimonial home along with the two children and only at the direction of a Women Constable, she came back to the matrimonial home. The First Respondent used to go to Typewriting Class but return home late. On 09.04.2015, in the guise of going to Kula Dheivam Temple, the First Respondent went to Chellampatti School Hostel to see the Male child in the School hostel without the consent of the Revision Petitioner. On 01.09.2015, the Revision Petitioner met with a road accident and the First Respondent came to see him only after his discharge from the hospital. On 10.01.2016, the First Respondent once again left the matrimonial home and at the instance of his brothers and Sister-in-Laws, she rejoined the matrimonial company of the Revision Petitioner, however, once again she left. On 24.04.2016, the Revision Petitioner issued a notice calling upon the First Respondent to rejoin the matrimonial company of the Revision Petitioner and on receipt of the same, the First Respondent came back along with the Respondents 2 and 3. However, again, on 31.05.2017, the First Respondent met the matrimonial home along with the Respondents 2 and 3. Therefore, the Revision Petitioner



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has filed HMOP No. 33 of 2018 for Restitution of Conjugal Rights. During the trial in HMOP No. 33 of 2018, the instant case in M.C. No. 38 of 2018 has been filed for maintenance. The First Respondent is now working in a private company and earning Rs.15,000/- per month. The family of the First Respondent possesses 2 houses at Old Quarters and one house at A.S.T.C. Nagar besides 8 acres of agricultural land. The Family Members of the First Respondent are receiving Rs.4 lakhs per year besides the mother of the First Respondent is in receipt of Rs.20,000/- as pension. Above all, the mother of the First Respondent is conducting chit and gets Rs.50,000/- per month. On the other hand, the Revision Petitioner is working as a Counsellor in Government Hospital, Dharmapuri in the year 2011 and as Social counsellor in the year 2011. In the year 2013, the Revision Petitioner was appointed as Medical Examiner in Veterinary Hospital. The Revision Petitioner is always ready and willing to live with the Respondents and to maintain them. When the First Respondent, without any just or reasonable cause left the matrimonial home, she is not entitled for maintenance. Accordingly, he prayed for dismissal of the Maintenance Case.

2.5. Before the Family Court, Dharmapuri in M.C. No. 38 of 2018, the First Respondent examined herself as PW1 and one Susila as PW2 and Exs. P1 to P5 were marked. On behalf of the Revision Petitioner, he examined himself



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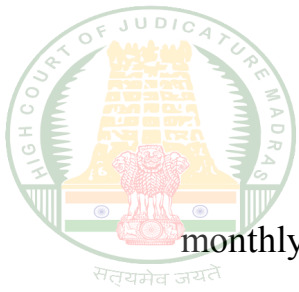
as RW1 and marked Ex.R1, copy of the Petition under HMOP No. 33 of 2018

WEB CRY filed for restitution of conjugal rights.

2.6. The learned Judge, Family Court, Dharmapuri, on considering the oral and documentary evidence, passed the order dated 26.08.2019 directing the Revision Petitioner to maintenance, as mentioned above. Challenging the said order dated 26.08.2019, the Revision Petitioner has come up with this Criminal Revision.

3. When the Criminal Revision came up for hearing before this Court on 08.06.2023, this Court directed the parties to appear before the Tamil Nadu Mediation and Conciliation Center attached to this Court to explore the possibility of a settlement of the dispute amicably. Though the petitioner and the first respondent appeared before the Centre, it appears that the dispute remains unresolved. A report dated 18.08.2023 to that effect has been sent to this Court by the Mediation Centre. Therefore, the Registry was directed to post this Revision under the caption for orders on 15.09.2023.

4. The learned Counsel for the Revision Petitioner submitted on 04.11.2019, when the above Criminal Revision was listed for hearing, this Court granted interim stay on condition that the Revision Petitioner shall pay



monthly maintenance awarded to Respondents 2 and 3 on or before 10th of every month and deposit 50% of the arrears of amount within a period of six weeks. The Order dated 04.11.2019 passed in Crl. M.P. No. 15568 of 2019 reads as follows:-

“The learned counsel for the petitioner would submit that the Trial Court having found the monthly income of the petitioner to be Rs.25,000/-, had directed the petitioner to pay Rs.6,250/- per month each to the 1st respondent/wife and to the 2nd and 3rd respondents/children, resulting in the petitioner being left with the meagre amount of Rs.6,250/- for his expenses and would submit that the Trial Court has also directed the petitioner to pay Rs.50,000/- per annum for educational expenses of the 2nd and 3rd respondents/children. He would further submit that the order passed by the Trial Court, directing the petitioner to pay 3/4th of his income towards maintenance is against the order passed by the Honb'e Apex Court. However, he would submit that the petitioner, without prejudice to the grounds raised, is prepared to pay the monthly maintenance of Rs.6,250/- each to his daughters and also to pay 50 % of the arrears amount within a time to be fixed by this Court. 2 Notice to the respondents returnable on 16.12.2019. The petitioner is directed to take private notice on the respondents and also intimate the counsel who has appeared for the respondent before the Trial Court. Post the matter for “reporting compliance” on 16.12.2019. 3 There shall be an order of Interim Stay till 16.12.2019, on condition that the petitioner shall pay the monthly maintenance award for R2 and R3 on or before 10th day of every month and the petitioner shall deposit 50% of the arrears of amount as on date within a period of six weeks, on such deposit being made, the 1st respondent is entitled to withdraw the same.”

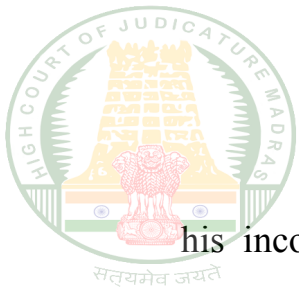
5. It is stated that during enquiry before the learned Judge, Family Court, Dharmapuri, the First Respondent/wife in her cross-examination admitted that she accepted that her family possessed 8 acres of agriculture



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land, through which she has income of Rs.4,00,000/- per year. She also admitted that her family members possess two houses. She also admitted that she is earning Rs.130/- per day as a worker in the ice factory. These admissions of the First Respondent show that she is having the wherewithal to maintain herself and the two children. However, the learned Judge, Family Court ignored those facts while ordering maintenance. Above all, the Revision Petitioner-husband has filed HMOP. No. 45 of 2017 before the Sub Court, Dharmapuri seeking restitution of conjugal rights which was later transferred to the file of Family Court, Dharmapuri and re-numbered as HMOP. No. 33 of 2018. During the pendency of HMOP No. 33 of 2018, as a counter blast, the First Respondent has filed M.C. No. 38 of 2018. In M.C. No. 38 of 2018 the first Respondent also admitted in her cross examination that she knows English and Tamil typewriting and also computer typing. It is the submission of learned Counsel for the Revision Petitioner/husband that the trial Court having found that both the parents have a legal, moral and social duty to protect their children and to give them the best education and standard of living within their means, erred in taking into consideration the income of the petitioner/husband and ordered $\frac{3}{4}$ th of his income to be paid as maintenance to the respondents. The learned Judge, Family Court ought to have observed that it would be impossible for the revision petitioner to live with just $\frac{1}{4}$ th of



his income. Thus, without advertng to the commitments of the Revision Petitioner, the Family Court directed the Revision Petitioner to pay a total sum of Rs.6,250/- per month to each of the Respondents besides paying the entire educational expenses. Therefore, the learned counsel for the Revision Petitioner seeks to modify the order passed by the Family Court, Dharmapuri. The learned counsel for the Revision Petitioner also submitted that the petitioner is earning salary of Rs.26,182/- and the reasonable expenses to be met by him every month are given as follows:-

1	Postal Life Insurance Premium	Rs. 5,098/-
2	Hand Loan (Promissory Note)	Rs. 5,000/-
3	Travelling Expenses to Office from Krishnagiri to Dharmapuri	Rs. 3,500/-
4	Housing Loan	Rs. 9,000/-
5	Personal Maintenance (Food)	Rs. 5,000/-
6	Total	Rs.27,598/-

6. It is further stated that the second respondent S/o. Petitioner viz., M. Lingeshram was born on 22 11. 2004 as per the birth certificate. Therefore, he attained the age of majority and he is not entitled to claim maintenance. Further, as per the order of this Court in Crl. M.P. No.15568 of 2019, the revision petitioner has to pay to the Respondent 2 and 3 the maintenance amount on or before 10th of every month and the petitioner shall deposit 50% of the arrears amount within a period of six weeks from the date of the order



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and the first respondent is entitled to withdraw the same. Accordingly, the

following amount was paid by the Revision Petitioner during the pendency of this Criminal Revision Case as follows:-

1.	21.11.2019	—	Rs.12,500.00
2.	05.12.2019	—	Rs.12,500.00
3.	19.06.2023	--	Rs. 7,000.00
4.	03.07.2023	—	Rs. 7,000.00
5.	06.07.2023	—	Rs. 7,000.00
6.	07.09.2023	—	<u>Rs. 9,000.00</u>
Total		-	<u>Rs. 55,000.00</u>

7. Accordingly, in Crl. M.P. No. 177 of 2019 before the family Court at Dharmapuri, the Revision Petitioner filed a Memo of Calculation as follows:-

SI	Date	<i>Amount</i>
1	26.11.2020	Rs. 50,000/-
2	08.01.2021	Rs. 15,000/-
3	17.02.2021	Rs. 17,000/-
4	17.03.2021	Rs. 15,000/-
5	03.09.2021	Rs. 40,000/-
6	06.10.2021	Rs. 15,000/-
7	01.12.2021	Rs. 10,000/-
8	19.03.2023	Rs. 25,000/-
9	19.04.2022	Rs. 10,000/-
10	14.06.2022	Rs. 25,000/-
11	12.07.2022	Rs. 25,000/-
	Total	Rs.2,22,000/-

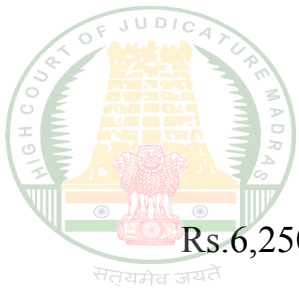


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WEB COPY8. Further, the Petitioner/Husband filed counter in Crl. M.P. No. 88 of 2021 before the learned Judge, Family Court, Dharmapuri stating that he paid the following amount in the Court.

SI	Date	<i>Amount</i>
1	10.11.2021	Rs. 10,000/-
2	10.08.2022	Rs. 10,000/-
3	16.09.2022	Rs. 10,000/-
4	15.10.2022	Rs. 10,000/-
5	05.11.2022	Rs. 10,000/-
6	21.11.2022	Rs. 25,000/-
7	03.12.2022	Rs. 10,000/-
8	03.01.2023	Rs. 20,000/-
9	20.01.2023	Rs. 10,000/-
10	04.02.2023	Rs. 15,000/-
11	27.02.2023	Rs. 5,000/-
12	18.03.2023	Rs. 10,000/-
13	01.04.2023	Rs. 9,000/-
14	16.05.2023	Rs. 10,000/-
	Total	Rs. 1,89,000/-

9. Thus, the learned counsel for the Revision Petitioner submitted that as per the above calculations, the revision petitioner had paid a total sum of Rs.4,55,000/- towards maintenance to the Respondents. It is further submitted that the third respondent/minor daughter alone is entitled to get



Rs.6,250/- per month as maintenance till she is married. Therefore, the learned

WEB COUNSEL for the revision petitioner submits that by taking note of the above payments made, the order passed by the learned Judge, Family Court, Dharmapuri ordering Rs.6,250/- per month towards maintenance to the wife and minor children has to be modified by holding that the minor son, who has attained the age of majority, is not entitled to claim maintenance. Further, the wife having accepted that she is qualified in English type writing and Tamil writing as well as computer typing and she is employed in ice factory, it has to be held that she is capable of earning and maintaining herself. In any event, she had admitted that she is earning through her job and also receiving income from the agricultural property owned by her family. Therefore, the maintenance ordered to the wife/first respondent in this revision also has to be set aside as she failed to join the matrimonial home.

10. Per contra, the learned Counsel for the Respondents submitted that by order dated 04.11.2019 in Crl.M.P. No. 15568 of 2019 this Court granted interim stay on condition. However, the Revision Petitioner has not complied with such order till date. The second respondent/son is studying Engineering Course at Dindigul in a private college. The third respondent is studying 12th Standard at Dharmapuri. It is the duty of the Revision Petitioner



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to maintain the children and pay their educational expenses. The Revision

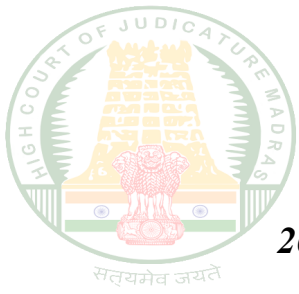
WEB COURT Petitioner never paid any amount to the respondents towards their education.

He had not obeyed the order of this Court dated 04.11.2019. The revision petitioner produced payslip before this Court indicating that he got promotion and salary hike. The Revision Petitioner is also getting incentives in his job. The first respondent/wife is not going to any job as on date. The Respondents are dependents on the Revision Petitioner. The First Respondent/wife is aged and not in good health and she is suffering without any financial aid from the Revision Petitioner, with the result, the Respondents are sustaining unexplained pain and suffering. The Respondents are depending on their near and dear ones for their livelihood and their basic needs. The Revision Petitioner, without paying the dues to the respondents, spending his salary lavishly. The order passed by the learned Judge, Family Court, Dharmapuri is a well-reasoned order, after appreciation of evidence on both sides and on the basis of admission made by the Revision Petitioner/husband in M.C.No.38 of 2018. Therefore, it does not warrant any interference by this Court. Hence, this revision petition is to be dismissed.

Point for consideration:

Whether the order of maintenance passed by the learned Judge,

Family Court, Dharmapuri in M.C. No. 38 of 2018 dated



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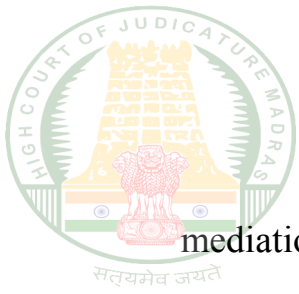
26.08.2019 to the wife and children at Rs.6,250/- each as maintenance warrants interference of this Court?

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11. Heard the learned Counsel for the Revision Petitioner/husband and the learned Counsel for the Respondents/wife and children. Perused the typed set of papers containing the deposition of P.W-1, P.W-2 and R.W-1 and the order passed in M.C. No. 38 of 2018 dated 26.08.2019 and the grounds of the Criminal Revision.

12. It is the contention of the learned counsel for the Revision Petitioner/Husband that the wife admitted in her cross-examination in M.C.No.38 of 2018 that her family owns 8 Acres of land and two houses and through the agriculture income, her family is in receipt of Rs.4,00,000/- per year. She also admitted that she is employed in a private firm/ice company and earning Rs.130/- per day. The Family Court, without taking note of the above admission of the First Respondent, erroneously directed the Revision Petitioner to pay maintenance to the Respondents.

13. It is to be noted that during the pendency of this Criminal Revision, the subject matter was referred to Mediation at the instance of the learned Counsel for the Revision Petitioner. When the matter was referred to



mediation, the mediation failed and there was no amicable settlement.

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Therefore, the case was posted before the Court for disposal on merit. It is found that the method adopted by the Revision Petitioner to delay the payment. From the evidence before the learned Judge, Family Court and in the averments in the maintenance case, it is found that the husband under the influence of alcohol, abused the First Respondent-wife physically and mentally which forced her to leave the matrimonial home, considering her safety and that of her children. During evidence, in cross-examination, she had admitted that her family owns 8 acres of agriculture property. Nowhere it is stated that per year Rs.4,00,000/- is the income generated through agriculture property. Therefore, the claim of the revision petitioner that the family owns 8 Acres of land and through that, they have income for Rs.4,00,000/- is not found acceptable. It is to be noted that the brothers of the wife have succeeded to the properties through partition. Therefore, the claim by the husband that the wife has income through agriculture properties is found unacceptable. It is a ploy to evade payment. As far as her qualification is concerned, she is qualified to get a job. On the date of enquiry before the learned Judge, Family Court, she is not employed. She had admitted that she was in employment but due to the frequent visit and causing trouble by the Revision Petitioner-Husband, the employer had terminated her service. When



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such evidence is available it cannot be said that the First Respondent is in employment. However, the Revision Petitioner- Husband filed HMOP No. 45 of 2017 under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights, before the Sub Court, Dharmapuri which was subsequently transferred to the file of the learned Judge, Family Court, Dharmapuri and renumbered as HMOP. No. 33 of 2018. It is also admitted by the First Respondent that during the pendency of HMOP No. 33 of 2018 she filed the maintenance case in M.C. No. 38 of 2018. It is true that the wife had filed maintenance case which is subsequent but she had in her cross examination stated she was not served with summons in HMOP No.33 of 2018 on the date of enquiry in the Maintenance Case in HMOP No. 33 of 2018.

14. On perusal of the order in M.C. No. 38 of 2018, it is found that the Revision Petitioner/husband has not filed the salary certificate as proof of his income. He had marked only Ex.R-1 which is the copy of the HMOP. No. 33 of 2018. The claim of the Revision Petitioner is that his income is only Rs.25,000/- per month out of which, $\text{Rs.6,250} \times 3 = \text{Rs.18750/-}$ was ordered to be paid as maintenance and he is left with only $\frac{1}{4}^{\text{th}}$ of his salary. This submission is unacceptable in the absence of production of salary certificate.

On the other hand, the First Respondent/Wife, in M.C.No.38 of 2018, claimed

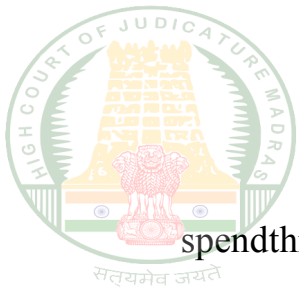


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that the Revision Petitioner-Husband is employed in Government service as
Medical Examiner.

15. It is the duty of the Revision Petitioner-Husband to maintain his wife and two children. Such an obligation on the part of the Revision Petitioner is not only moral but also legal. The claim of the husband that he need not pay the maintenance amount to the son as he attained the age of majority is accepted, but till the date of attaining age of majority, he had to pay maintenance. The Revision Petitioner/Husband had cleverly chosen not to furnish his pay particulars. The learned Judge, Family Court had not insisted or directed him to furnish pay particulars. When he claims that he is in government job, he is duty bound to furnish details of his pay. In the absence production of salary certificate, the claim made by him that out of 25,000/-, Rs.18,750/- is parted off every month to his wife and children cannot be countenanced. Consequently, the Revision Petitioner-Husband is not entitled to seek to set aside the order of maintenance passed by the learned Judge, Family Court.

16. It is to be noted that the First Respondent-Wife preferred Maintenance Case alleging that the Revision Petitioner-Husband is a



spendthrift and addicted to alcohol, physically assaulting the wife and abusing her by words, causing mental and physical torture. Therefore, she was forced to move out from the matrimonial home for her protection and for protection of her children. In cases of this nature, the husband will not normally furnish his salary certificate. On the other hand, he claims that the wife has income. As per the reported ruling of the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha reported in AIR 2021 SCC 569***, both parties had to furnish affidavit regarding assets and liabilities. Here, the husband had not done so. Therefore, the claim of the husband need not be considered. What has been admitted by the Revision Petitioner that he is earning only Rs.25,000/- per month was taken for consideration by the learned Judge and based on which Rs.6250/- to each as maintenance to the Respondents was ordered, in total Rs.18,750/- which is a reasonable amount.

17. In the written submissions, the learned Counsel for the Revision Petitioner submitted that the Revision Petitioner had deposited a total sum of Rs.4,55,000/-. As per the written submissions filed by the Respondent/Wife, the interim order passed by this Court in Crl. M.P. No. 15568 of 2019 in Crl.R.C. No. 1164 of 2019 has not been complied with.



WEB COPY18. On consideration of the rival submissions, the submission of the learned Counsel for the Revision Petitioner/Husband cannot be accepted. This petition had been filed with an ulterior motive to delay the payment. In any event, the amount of maintenance ordered by the Family Court cannot be considered to be excessive, warranting interference by this Court. Therefore, the order of the learned Judge, Family Court, Dharmapuri is found proper. It does not warrant any interference either to modify or set aside the same.

19. In the light of the above discussion, the point for consideration is answered against the Revision Petitioner and in favour of the Respondents. The order of maintenance passed by the learned Judge, Family Court, Dharmapuri in M.C. No. 38 of 2018 dated 26.08.2019 to the wife and children at Rs.6,250/- each as maintenance is found proper. It is well reasoned order. It does not warrant interference by this Court.

25. It is made clear that if the directions issued by the Family Court for payment of maintenance has not been complied with by the Revision Petitioner, it is open to the Respondents to approach the learned Judge, Family Court, Dharmapuri for appropriate relief, either to attach the salary of the



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Revision Petitioner or for his imprisonment for enforcing the order of maintenance.

In the result, **this Criminal Revision Petition is dismissed** with costs.

The order of maintenance passed by the learned Judge, Family Court, Dharmapuri in M.C. No. 38 of 2018 dated 26.08.2019 is confirmed. Consequently, connected Miscellaneous Petition is closed.

03.03.2025

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Judge,
Family Court, Dharmapuri
2. The Section Officer,
Criminal Section,
High Court, Madras



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SATHI KUMAR SUKUMARA KURUP, J

dh

Order made in
Crl. R.C. No.1164 of 2019

03.03.2025