

**(1984) 10 MAD CK 0008**  
**In the Madras High Court**

**Case No :** Criminal R.C. No. 607 of 1981 (Cr. R.P. No. 593 of 1981)

|            |    |            |
|------------|----|------------|
| Subbayal   |    | APPELLANT  |
|            | Vs |            |
| Muthuswamy |    | RESPONDENT |

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**Date of Decision :** 18-10-1984

**Acts Referred:**

**Citation :** (1984) 10 MAD CK 0008

**Hon'ble Judges :** David Annoussamy, J

**Bench :** Single Bench

**Advocate :** T. Balasubramaniam, for the Appellant; K. Sengottian and S. Nandakumar, for the Respondent

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## **Judgement**

David Annoussamy, J.—This is a revision petition against the order of the Judicial First Class Magistrate, Erode, in Cr. M.P. 456 of 1981,

dismissing the petition of the wife to enhance the maintenance.

2. The wife was granted maintenance in the year 1976 at the rate of Rs. 50/- per month payable by the husband. She filed the petition in the year

1981 praying for the enhancement of the maintenance to Rs. 200/- per month stating that on account of rise in the cost of living index the amount

paid by the husband was absolutely insufficient to meet her needs.

3. The learned Magistrate accepting the plea of the husband that there was no change in the circumstances of the parties, dismissed the petition by

his judgment dt. 23-6-1981. It is against that judgment this present revision petition is filed.

4. The amount was fixed at Rs. 50/- per month taking into consideration the fact that the husband was in addition to his salary as cooly, having an

approximate annual income of Rs. 5000/- as his share from the lands. At that

time the cost of living index was 286. (January 1976). Now the cost of living index is 558 (January 1984). Obviously the salary as well as the land income of the husband have increased nominally. As far as wife is concerned, though the amount of maintenance is nominally the same, it does not provide the same purchasing power. Therefore, what she seeks is in reality not alteration of her maintenance in real terms, but only alteration of the maintenance in nominal terms so as to restore the real amount of maintenance earlier granted. Therefore, the change of circumstances pleaded is only that the nominal amount fixed by the Court does not serve the purpose for which it was fixed, since she is not able to get with the same amount of Rs. 50/- the same quantity of goods as in the year 1976. This is a real change in the circumstances which the Court has necessarily to take into account. It is the duty of the Court to see that the amount of maintenance is not only the same in nominal terms but remains the same in real terms. In the case of salaried people, the restoration of the salary to the real terms is achieved by way of grant of dearness allowance. Enhancement of maintenance on account of rise of cost of living index would serve the same purpose and does not bring about any modification of the real amount and does not require any special change in the circumstances of the person. As pointed out, the simple fact that the nominal amount does not represent the same real amount as granted, is a sufficient change in the circumstances.

5. As far as this case is concerned on account of change in the cost of living index the petitioner is entitled to Rs. 96/- ( $\text{Rs. } 50 \times 558/286$ ). Since I have taken into consideration the cost of living index of 1984, enhancement of maintenance will be payable with effect from October, 1984.

6. In the result, the revision petition is allowed. The order of the Magistrate in Cr. M.P. 456 of 1981 is set aside and the amount of maintenance is refixed at Rs. 96/- from 1st October 1984.

7. Revision allowed.