

1948

Present : **Basnayake J.**

RASAMANY, Appellant, and SUBRAMANIAM, Respondent

S. C. 484—M. C. Anuradhapura, 21,381

*Maintenance—Having sufficient means—Capacity to earn money—Liability of husband—Section 2.*

The word " means " in section 2 of the Maintenance Ordinance should be given a wide meaning and includes the capacity to earn money.

**A**PPEAL from a judgment of the Magistrate, Anuradhapura.

*H. W. Tambiah*, with *S. Sharvananda*, for the applicant, appellant.

*C. Thiagalingam*, for the defendant, respondent.

*Cur. adv. vult.*

July 21, 1948. **BASNAYAKE J.**—

The appellant is the wife of the respondent. They were married in May, 1947, and lived together at Chavakachcheri till September, 1947, when respondent took the appellant to the house of her parents at Anuradhapura and left her there. The appellant alleges that from that time the respondent has failed to maintain her. The respondent was a clerk at the Trincomalee Kachcheri from May, 1947, to February, 1948. He is not employed now. The appellant instituted proceedings for maintenance against the respondent once before this, and in those proceedings the respondent offered to maintain the appellant on condition of her living with him. She accepted the respondent's offer but he failed to maintain her. In these proceedings too, at the very outset, the respondent made a similar offer, but the appellant declined to accept it. The learned Magistrate is satisfied that she has good grounds for her refusal.

The appellant and the respondent appear to be persons of some social standing. The appellant's father is a trader in straw. At her marriage her father gave a dowry of Rs. 2,000 in cash, Rs. 2,000 in jewellery, and a land worth Rs. 4,000. The money received as dowry formed part of the purchase price of a land the respondent purchased at Chavakachcheri, which is his home. The respondent says he has no employment and no income. He also claims that he has to look after his parents. He asserts that he is prepared to maintain the appellant if she will come and live with him. The following is his evidence on the point :

" Even in this case, on an earlier date I offered to take back applicant to Chavakachcheri. I have put up a house on the land we bought in applicant's name. A husband and wife can live in the house I have put up. The new house is as big as my father's house. I have three brothers and one sister and my parents; in all five people live in that

house. I am prepared to build a bigger house later. I even now am willing to take applicant to Chavakachcheri and select any house at Chavakachcheri for applicant."

In cross-examination he says :

"Applicant was a dutiful wife to me. I am unemployed at the moment. I have no income. I have to look after my parents. I am prepared to maintain my wife if she will come and live with me. I have no income on my own. I can cultivate other people's lands and support my wife."

The appellant alleges that the respondent has property. She relies on the fact that the respondent applied for the village headmanship of Chavakachcheri. The respondent admits that he applied for that office but denies that he is possessed of any property. The learned Magistrate while holding that the appellant is entitled to maintenance has refused to make an order under section 2 on the ground that the respondent has not sufficient means.

On the evidence in this case I am unable to agree with the learned Magistrate. Under section 2 of the Maintenance Ordinance, if any person *having sufficient means* neglects or refuses to maintain his wife, the Magistrate may order such person to make a monthly allowance for the maintenance of his wife. Section 3 goes on to say that if such person offers to maintain his wife on condition of her living with him, the Magistrate may consider any grounds of refusal stated by her, and may make an order under section 2, notwithstanding such offer. The respondent's claim that he is unable to pay maintenance is irreconcilable with his offer to maintain his wife on condition of her living with him. It is noteworthy that section 3 speaks of "such person", meaning thereby "a person having sufficient means". If a man is able to maintain his wife on condition of her living with him, it will be doing violence to language to say that he is a person without sufficient means to maintain his wife. The respondent has not only offered to maintain his wife on condition of her living with him, but he has also offered to leave her to select any house in Chavakachcheri to live in.

Learned counsel for the appellant submits that the word "means" should in this context be given a wider meaning than income. He cites the cases of *Sivapakiam v. Sivapakiam*<sup>1</sup> and *Thangachi v. Mohamadul Lebbe*<sup>2</sup>. The second case has no bearing on the present discussion. In the first case, Maartensz J. relies on the decision of Burnside C.J. in *K. Michohamy v. A. Suddappu*<sup>3</sup> and the English case of *Earnshaw v. Earnshaw*<sup>4</sup>. Neither of these cases is a decision on a statute which contains the words "having sufficient means". The former case is a decision on section 3 (2) of the Vagrants Ordinance, No. 4 of 1841, which reads :

"Every person being able, wholly or in part, to maintain his family, leaving his wife or his child, legitimate or otherwise, without maintenance or support, whereby they shall become chargeable to or require to be supported by others."

<sup>1</sup> (1934) 36 N. L. R. 295.

<sup>3</sup> 3 Cr. App. R. 43.

<sup>2</sup> (1883) 5 S. C. C. 198.

<sup>4</sup> (1896) 74 L. T. R. 560.

The latter is a decision under section 1 of the Summary Jurisdiction (Married Women) Act, 1895, the material words of which read—

“ whose husband shall have deserted her, or whose husband shall have been guilty of persistent cruelty to her, or wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain. ”

That decision rests on the effect of the words “ wilful neglect ”. It was held that wilful neglect must be proved by evidence showing that the husband had or could earn money or could get money.

Learned counsel for the respondent submits that “ means ” does not mean ability to earn and that under the Maintenance Ordinance there was no obligation to work and pay. He also submits that the phrase “ having sufficient means ” should be understood in the sense of having sufficient means at the material date. I am unable to accept the submissions of learned counsel for the respondent. In my view section 2 should be given a wide meaning and not restricted in its scope to persons having an income or actually earning at the time of the application. In this context the word “ means ” should be taken to include capacity to earn money. It cannot be that the legislature when enacting these provisions intended to exclude from the scope of sections 2 and 3 able-bodied men capable of earning and maintaining their wives and children but who by their voluntary act refrain from so doing. A consideration of the decisions under section 488 of the Indian Criminal Procedure Code sub-section (1) of which has the very words of our section 2, “ If any person having sufficient means neglects or refuses to maintain his wife, or his legitimate or illegitimate child unable to maintain itself ”, confirms me in the view that the words “ sufficient means ” should not be given a narrow meaning. The general effect of these decisions is that the expression “ means ” is not confined to visible means such as real property or definite employment.

In the Madras case of *Kandasami Chetty*<sup>1</sup> it was held that a healthy able-bodied man must be taken to have sufficient means to support his wife. Beaumont C.J. in the Bombay case of *Muni Kantivijayaji v. Emperor*<sup>2</sup> says :

“ I think that ‘ means ’ within section 488 includes a capacity to earn money, and that if a man can be shown to be capable of earning money, then he has the means to maintain his wife. *Prima facie*, a man twenty-six years of age as the applicant in this case is must be presumed to be capable of earning money. But that presumption may be rebutted.”

The High Court of Burma has in a series of cases taken a similar view. In the case of *Ma Tha v. Nga San E.*<sup>3</sup> it was held that the presumption was that an able-bodied man had sufficient means to support his child as well as himself and that it was for him to prove the contrary. This decision was followed in the case of *U. Thiri v. Ma Pwa Yi*<sup>4</sup> where it was held that a Buddhist monk was regarded as a person having sufficient

<sup>1</sup> (1926) A. I. R. Madras 346.

<sup>3</sup> 13 Cr. L. J. 162.

<sup>2</sup> (1932) A. I. R. Bombay 285.

<sup>4</sup> (1923) A. I. R. Rangoon 131.

means although he lived on charity. The observations of Page C.J. in the case of *Maung Tin v. Ma Hmin*<sup>1</sup>, a decision of the Full Bench, should be noticed in this connexion. He says at page 140 :

“ But the term ‘ sufficient means ’, in my judgment, is not confined to pecuniary resources, and I agree with the view expressed by Eales J.C. in *Ma Tha v. Nga San E.* (13 Cr. L. J. 162) that ‘ a mere denial by a man himself of sufficiency of means, when that man is an able-bodied man, is not conclusive proof of want of sufficient means ’.”

His remarks at page 141 are equally relevant. He says :

“ In my opinion, a man is not, and ought not to be, permitted by his own voluntary act to free himself from the elementary duty of maintaining his wife and children.”

On his own admission the respondent is capable of earning and maintaining his wife. I therefore allow the appeal with costs and set aside the order of the learned Magistrate and send the case back with a direction that the learned Magistrate should determine the amount of maintenance that the respondent should be ordered to pay. The appellant is entitled to the costs of the trial.

*Appeal allowed.*

