

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.R.C.No.607 of 2019
and
CrI.M.P.Nos.8297 & 8298 of 2019

Abdul Dawood Khan Revision Petitioner

Vs.

1.Minor Riana Khan
Represented by Mother and
Natural Guardian Swapna Khan

2.Minor Anika Khan
Represented by Mother and
Natural Guardian Swapna Khan

3.Minor Alisha Khan
Represented by Mother and
Natural Guardian Swapna Khan

4.Swapna @ Swapna Khan Respondents

Prayer: Criminal Revision Case filed under Sections 397 r/w. 401 Cr.P.C., praying to set aside the order dated 26.02.2019 made in M.P.No.157 of 2018 in M.C.No.367 of 2017 on the file of the III Additional Family Court, Chennai.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondents: Mr.Krishnaraj

O R D E R

This Criminal Revision Case has been filed against the order dated 26.02.2019 made in M.P.No.157 of 2018 in M.C.No.367 of 2017 on the file of the III Additional Family Court, Chennai.

2.For the sake of convenience, the parties will be referred to by their name.

3.Swapna got married to Abdul Dawood Khan on 11.02.2005 and they have three children through the wedlock. On account of matrimonial discord, the spouses got estranged. Swapna filed a maintenance case in M.C.No.367 of 2017 under Section 125 Cr.P.C. before the III Additional Family Court, Chennai, claiming maintenance for herself and for her three children. She also filed M.P.No.157 of 2018 in M.C.No.367 of 2017, claiming interim maintenance. On notice, Abdul Dawood Khan entered appearance and filed his counter affidavit in the main petition, viz., M.C.No.367 of 2017. After considering the case of Swapna and Abdul Dawood Khan, the Family Court, by order dated 26.02.2019, has issued the following directions.

'In the result, this petition is allowed thereby directing the respondent to pay Rs.10,000/- (Rupees Ten thousand only) per month to the 1st petitioner, Rs.5,000/- (Rupees Five thousand only) per month each to the 2nd, 3rd and 4th petitioners totalling Rs.25,000/- (Rupees Twenty Five thousand only) per month as interim maintenance from the date of this petition viz. 3.10.2017. Respondent is further directed to pay the said amount on or before 5th of every month. Respondent is further directed to pay litigation expenses of Rs.15,000/- (Rupees Fifteen thousand only) to the petitioners. No costs.'

4.Challenging the order, Abdul Dawood Khan is before this Court.

5.Heard Mr.T.L.Thirumalaisamy, learned counsel for Abdul Dawood Khan and Mr.Krishnaraj, learned counsel for Swapna.

6.Mr.T.L.Thirumalaisamy contended that the gross salary of Abdul Dawood Khan of Rs.71,089/- has been taken into account for fixing the interim maintenance, which is far and excessive.

7.Per contra, the learned counsel for Swapna refuted the contention.

8.This Court gave its anxious consideration to the rival submissions.

9.It is seen that, even in the counter affidavit filed by Abdul Dawood Khan in the petition under Section 125 Cr.P.C., he has not stated where he is working and what is his salary. It is incumbent on husband to plead all these facts. Therefore, in the absence of any such plea, the finding arrived at by the Family Court cannot be said to be perverse. That apart, Swapna has to take care of herself and three children. Till date, Abdul Dawood Khan has not paid even a single paise to Swapna or his children. Under such circumstances, much indulgence cannot be shown to Abdul Dawood Khan.

10.However, taking into consideration the overall circumstances of the case, this Court is of the view that the interests of justice will be served, if the monthly interim maintenance payable to Swapna is reduced from Rs.10,000/- to Rs.5,000/-, on account of which, Abdul Dawood Khan will have to pay totally a sum of Rs.20,000/- per month as interim maintenance for his wife and three children at Rs.5,000/- each.

11.With the above modification in the order of the Family Court dated 26.02.2019, this Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(CJ.conf)

//True copy//

Sub Assistant Registrar

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To

The III Additional Principal Judge,
Family Court, Chennai.

+2cc to Mr.H.Krishnaraj, Advocate SR.No.53759

+1cc to Mr.T.L.Thirumalaisamy, Advocate SR.No.66840 (05/08/2019)

Cr1.R.C.No.607 of 2019 and
Cr1.M.P.Nos.8297 & 8298 of 2019

SV(CO)
GMY(19/07/2019)