

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1363 of 2018
and
Crl.M.P.No.15850 of 2018

M.Moshin Khan

...Petitioner/Respondent/ Respondent

-Vs-

1. Sharmila Banu
2. A.Amirah Gulshan (Minor)
3. Amid Muhammad (Minor)

...Respondents/Petitioners/Petitioners

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to call for the entire records and to set aside the order dated 06.06.2018 made in M.P.No.280 of 2018 in M.C.No.154 of 2017 on the file of the learned VI Additional Family Court, Chennai.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.K.Perumal

O R D E R

This Criminal Revision has been filed by the petitioner to set aside the order dated 06.06.2018 made in M.P.No.280 of 2018 in M.C.No.154 of 2017 on the file of the learned VI Additional Family Court, Chennai.

2. The revision petitioner is the husband and the respondents are wife and minor children. Due to difference of opinion, the petitioner and the respondents are living separately. The respondents filed a maintenance case under Section 125(1) of Cr.P.C. in M.C.No.154 of 2017 before the VI Additional Family Court, Chennai. During the pendency of the maintenance case, the respondents have filed a miscellaneous petition, claiming interim maintenance. The Family Court, after adverting to the materials placed on record and after hearing

both the parties, partly allowed the petition and the petitioner was directed to pay a sum of Rs.10,000/- per month to the first respondent and Rs.5,000/- each to the second and third respondent towards maintenance.

3. In the meanwhile, the respondents have filed a petition under Domestic Violence Act in D.V.C.No.364 of 2017 before the Additional Mahila Court, Chennai. During the pendency of the case, the respondents filed a petition in CMP No.3869 of 2017, seeking interim maintenance from the petitioner. After an elaborate enquiry, the learned Judge directed the petitioner/husband to pay a sum of Rs.3000/- per month each to the respondent.

4. Both the cases were filed by the respondents and the same are pending. Both the Courts have passed an interim order. It is seen that interim order was passed by the learned Mahila court in CMP No.3869 of 2017 in DVC. No.364 of 2017 dated 11.12.2017 and an order was passed by the Family Court in M.P.No.280 of 2018 in M.C.No.154 of 2017 dated 06.06.2018. The Family Court, without noting the order passed by the learned Mahila Court, has passed an order for interim maintenance.

5. As against the order passed by the Family Court in M.P.No.280 of 2018 dated 06.06.2018, the revision petitioner/husband has filed this present revision before this Court.

6. The learned counsel for the petitioner/husband would submit that the petitioner is not employed and he is not having sufficient means to maintain his wife and children. The first respondent left the matrimonial home without any valid reasons. The first respondent is working in a private Insurance Company and getting a salary of Rs.25,000/- per month. Hence, she is not entitled to claim maintenance from the revision petitioner. Therefore, the learned counsel prays this Court to set aside the order passed both by the Family Court and Mahila Court, Chennai.

7. The learned counsel for the respondents would submit that the respondents are unable to maintain themselves. After the marriage, the petitioner and his family members had started ill-treating the first respondent and demanding dowry. Hence, she left the matrimonial home. The first respondent stated that the petitioner is well off in finance and he has sufficient means. Despite having sufficient means, he refused to maintain his wife and children. Therefore, the respondents have filed the petition for maintenance.

8. Heard the learned counsel appearing on behalf of the petitioner as well as the respondents and perused the materials placed on record.

9. It is admitted that the first respondent is the wife of the petitioner and the second and third respondents are their children. Due to difference of opinion, the petitioner and the first respondent are living separately. Despite having sufficient means, the revision petitioner is neglecting and refusing to maintain his wife and children.

10. On a perusal of records, it could be seen that the proceedings under section 125 Cr.P.C. itself is a summary procedure. The learned counsel for the revision petitioner submitted that the respondent/wife has suppressed the interim order of maintenance passed by the learned Mahila Court under Domestic Violence Act. But the Family Court in his order has clearly stated about the order of interim maintenance passed by the learned Mahila Court. Therefore, the contention of the learned counsel for the petitioner is not correct. The revision petitioner has not come to the Court with clean hands. The petitioner in his counter has stated that he is jobless at present and not having any source to pull on his life.

11. Under these circumstances, the order passed by the Family Court, Cuddalore in M.P.No.280 of 2018 in M.C.No.154 of 2017 dated 06.06.2018 is hereby set aside and the Family Court is directed to dispose of the maintenance case in M.C.No.154 of 2017 in accordance with law, within a period of one month from the date of receipt of a copy of this order.

12. With the above observation and direction, the Criminal Revision case is allowed by setting aside the order dated 06.06.2018 made in M.P.No.280 of 2018 in M.C.No.154 of 2017 passed by the learned Family Court, Chennai. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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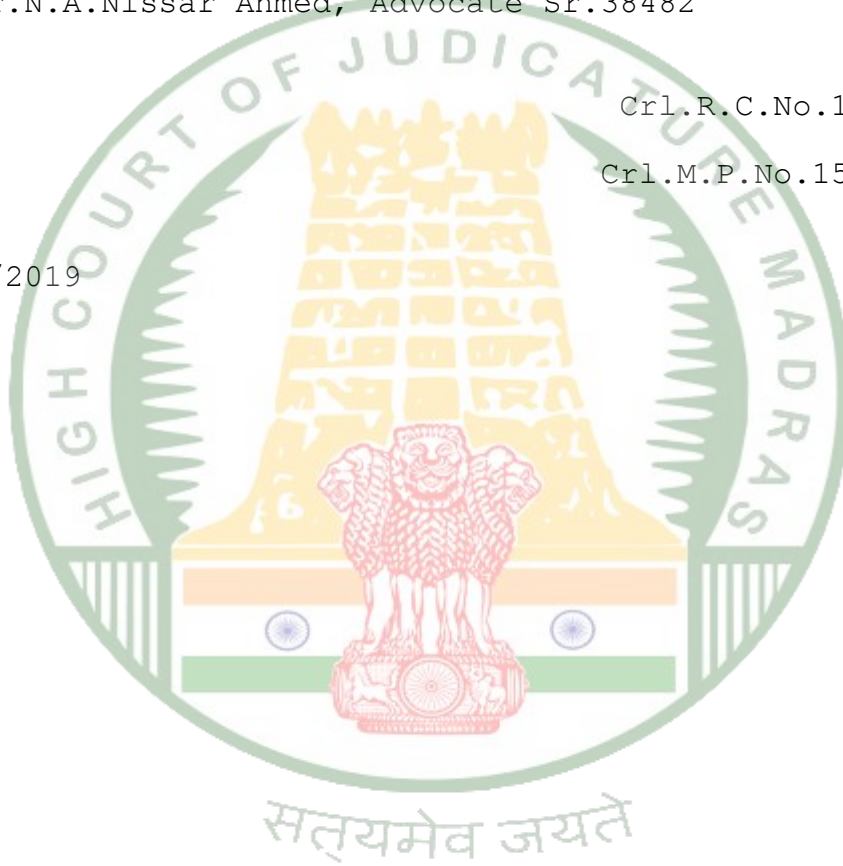
1. The Additional Mahila Court,
Egmore, Chennai.
2. The VI Additional Family Court,
Chennai.

+lcc to Mr.K.Perumal, Advocate sr.38055

+lcc to Mr.N.A.Nissar Ahmed, Advocate Sr.38482

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