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Crl.RC.No.478 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.478 of 2020

1.C.Janani @ Mageshwari
2. Kartheeswar

... Petitioners

Vs.

S.Ramkumar

... Respondent

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for the records of the order dated 30.12.2019 passed in M.C.No.267 of 2017 on the file of the V Additional Family Court at Chennai and set aside the same.

For Petitioners : M/s.L.Kavitha

For Respondent : Mr.S.Vinod Sathya



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ORDER

This Criminal Revision Case has been filed seeking to set aside the order dated 30.12.2019 passed in M.C.No.267 of 2017 on the file of the V Additional Family Court, Chennai.

2. The petitioners are wife and son of the respondent herein. The petitioners had filed a maintenance case in M.C.No.267 of 2017 before the V Additional Family Court, Chennai, seeking maintenance from the respondent and the same was dismissed by order dated 30.12.2019. Aggrieved over the same, the petitioners have filed the present revision before this Court.

3. The learned counsel for the petitioners would submit that the first petitioner was working in a private company prior to Corona Pandemic and subsequently, she lost the job and now she is not working anywhere permanently. The child/second petitioner is aged only about 11 years. The respondent is working in a construction company. As a dutiful father, he is liable to maintain the child. Though the respondent taken the ground of



adultery against the first petitioner, the respondent not disputed the paternity of the child. Therefore, he is liable to pay maintenance to the child/second petitioner herein. The trial Court failed to consider the legal as well as the moral obligations of the first petitioner and totally dismissed the petition which warrants interference.

4. The learned counsel for the respondent would submit that the respondent is working only as a driver and earning a very meagre amount and he is even unable to maintain himself. Further, the first petitioner is working in IT company and earning about Rs.75,000/- per month. Even during cross examination, the first petitioner herself admitted that she can maintain her husband and therefore, the Family Court by observing that the first petitioner who took the custody of the child/second petitioner on her own, is able to maintain the child and the respondent has no source of income, dismissed the petition. Therefore, the first petitioner is not entitled for maintenance either for herself or for the child and there is no merit in the revision.



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5. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

6. Admittedly the first petitioner is wife and second petitioner is the son of the respondent herein. After marriage, due to some misunderstanding, both the petitioners and the respondent separated each other and living separately. The petitioners had filed a petition in M.C.No.267 of 2017 on the file of the V Additional Family Court, Chennai seeking maintenance from the respondent and at the same time, the respondent had filed a petition for divorce in O.P.No.2820 of 2015. After hearing both the petitions, the Family Court Judge, allowed the petition filed by the respondent herein and granted decree of divorce. However, dismissed the petition filed by the petitioners herein seeking maintenance. Aggrieved over the same, the first petitioner along with the child has filed the present revision before this Court.

7. The main stand taken by the respondent is that the first petitioner is living in adultery and therefore, she is not entitled to get maintenance and further, the first petitioner is able to maintain herself and the child.



8. Admittedly, in the petition before the Family Court itself, the first petitioner has admitted that she is a B.Sc Computer Science Degree holder and prior to marriage she worked in an IT company the respondent has studied only upto 12th Std. Though the first petitioner stated that the respondent is working in a construction company, there is no proof to show that the respondent is having sufficient means to maintain. Further, though, the learned counsel for the petitioners stated that the first petitioner has no any permanent job, no document is produced to show that she left her job and as on date, she is jobless. Even otherwise, since the first petitioner is a B.Sc Computer Science graduate and having working experience in IT Company, it cannot be accepted that the first petitioner is unable to maintain herself.

9. Admittedly both the parties have not disclosed their actual income. The Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha and Another reported in (2021) 2 SCC 324*** has held that in the maintenance case, both the parties have to file affidavit of disclosure of Assets and Liabilities before the Family Court. In this case, the parties have not filed the same and they are blaming each other. More so ever, when neither of the parties disclosed



their income or proved their income and when the income details are in the exclusive knowledge of the party itself, one party cannot compel the other one to produce the same. However, the parties can very well summon their employer to produce the same.

10. Section 125 Cr.P.C. is very clear that when the wife is unable to maintain herself and despite having sufficient means, if the husband neglected to maintain the wife, she is entitled to get maintenance from the husband. In this case, the first petitioner not proved that she is unable to maintain herself. Though, the learned counsel for the petitioners stated that since the child is aged about 11 years, as a dutiful father, the respondent has to maintain the child, as already stated, the first petitioner has not substantiated the income of the respondent and also not proved that despite having sufficient means, the respondent neglected to maintain them. Since the first petitioner has not substantiated her case before the Family Court, the Family Court dismissed the petition filed by her and this Court does not find any merit in this revision. Therefore the revision is liable to be dismissed.



11. However, as per Section 127 Cr.P.C., in case of any change in circumstances and if either of the party can substantiate the change in circumstances, they can always approach the Magistrate/Family Court for modification or cancellation of earlier order. Under such circumstances, now passing of any order in this revision would amount to double jeopardy.

12. Therefore, the petitioners are at liberty to approach the competent Court to get maintenance in case if they are unable to maintain themselves and if they can substantiate that the respondent despite having sufficient means, neglected to maintain them.

13. With the above observations, this Criminal Revision Case is dismissed.

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P.VELMURUGAN,J.

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To

The V Additional Family Court,
Chennai.

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