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Crl.R.C.No.469 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.12.2022

PRONOUNCED ON: 13.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.469 of 2022

and

Crl.M.P.No.4859 of 2022

J.Jayabalamurugan

... Petitioner

Vs.

1. Vimala

2. Minor Dharikashree

3. Minor Harshavardhan

[Petitioners 2 and 3 minors represented
by Vimala, mother/natural guardian]

... Respondents

Prayer:

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C.,
to set aside the order dated 11.03.2022 passed in M.C.No.591 of 2013 on the
file of the II Additional Family Court, Chennai.



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For Petitioner : M/s.V.Raghavachari

For Respondents : M/s.R.Murugesan

* * * * *

ORDER

This Criminal Revision Case has been filed against the order dated 11.03.2022 passed in M.C.No.591 of 2013 on the file of the II Additional Family Court, Chennai.

2. Petitioner is the husband. Respondents are wife and children. Respondents filed a maintenance case in M.C.No.591 of 2013 on the file of the II Additional Family Court, Chennai under Section 125 Cr.P.C., seeking maintenance from the petitioner at the rate of Rs.10,000/- for each of the respondents, and also Rs.25,000/- as litigating expenses. The Family Court after enquiry and examination of oral and documentary evidence, ordered Rs.5,000/- to the first respondent and Rs.10,000/- each to the second and third respondents towards maintenance and also ordered Rs.25,000/- towards litigating expenses. Challenging the same, the petitioner/husband has filed



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the present Criminal Revision Case before this Court.

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3. Learned counsel for the Criminal Revision Petitioner has submitted that the first respondent/wife left the matrimonial home on her own volition without any valid reason and even without informing the petitioner/husband. The petitioner filed a divorce petition in H.M.O.P.No.117 of 2012 on the file of Subordinate Court at Usilampatti against the first respondent. During the pendency of the divorce petition, the first respondent/wife filed H.C.P.No.591 of 2012 before this Court against the petitioner/husband and others, as if there is a danger to her daughter. In H.C.P.No.591 of 2012, Hon'ble Division Bench of this Court directed the parties to settle the matter amicably based on their undertaking and also directed the first respondent to come to Usilampatti to lead a happy and peaceful married life with the petitioner/husband and their children. Despite the order of this Court, the first respondent did not come and live with the petitioner. The petitioner sent a letter to the first respondent on 19.08.2012 informing that he has arranged a separate house and inviting her to live with him. Even after the receipt of the letter, the first respondent is not ready to live with him. The petitioner herein filed guardian O.P.No.34 of 2014 seeking interim custody of the children and the same is pending. On the



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ill advise of her brother who is working in the Police Department, and taking advantage of the same, the first respondent refused to live with the petitioner/husband. The petitioner has filed his affidavit of assets and liabilities, whereas the first respondent in her affidavit of assets and liabilities, has not disclosed her income instead, she mentioned the assets and liabilities of the petitioner. Family Court failed to discuss the adamant attitude of the first respondent that she left the matrimonial home on her volition. The first respondent filed petition after petition to give trouble to the petitioner. Due to troubles and tortures made by the first respondent, the petitioner could not concentrate on his work and lost his job also. The first respondent herself in her affidavit stating that the petitioner is not continuing in any job permanently. If that be the case, the first respondent is able to maintain herself since she is working as teacher in private school, where as, the petitioner is unable to maintain himself. Hence, the petitioner is not liable to pay maintenance amount to the first respondent/wife. Family Court failed to consider all the materials both oral and documentary evidence, only on sympathy ground ordered Rs.25,000/- as maintenance amount. Hence, order of the family Court is liable to be set aside.



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4. Learned counsel for the respondents would submit that the first respondent is always ready and willing to live with the petitioner. The petitioner and his parents ill treated the first respondent and also they continuously tortured and harrassed her. They have not even provided nutritious food to the children and they did not take care of them. Hence, she left the matrimonial home. The petitioner and their family members took away the children and not even allowing her to see her children. Hence, she filed H.C.P.No.591 of 2022 before this Court and this Court ordered the petitioner to withdraw the divorce petition which was filed by him, where as, he has not withdrawn the divorce petition and the same is pending till 2016 and exparte order was passed in the year 2016. For the letter dated 19.08.2019 sent by the petitioner, the first respondent sent reply through Ex.P37. Subsequently after the receipt of the reply letter, the petitioner has not taken any effective steps to take back the respondents to matrimonial home. In order to escape from the payment of maintenance, the petitioner has made false allegations against the first respondent as if she is not ready to live with the petitioner. Further, it is represented by the learned counsel for the



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respondents that the respondent is working as teacher and she is getting meager salary, and it is not sufficient for her to maintain herself and her children. Hence, she filed M.C.No.591 of 2013 on the file of the II Additional Family Court, Chennai. The petitioner working as a software engineer and he is getting salary of Rs.80,000/- per month. Despite having sufficient means and when the respondents are unable to maintain themselves, the family court rightly ordered maintenance amount and there is no merit in the revision case and the same is liable to be dismissed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, petitioner is the husband and first respondent is wife and second and third respondents are their children. Relationship of the parties is not in dispute. Paternity of the children is also not in dispute. Both the petitioner and the respondents are living separately. Both the children are living with the mother/first respondent. According to the petitioner/husband, since the first respondent/wife left the matrimonial home without any valid



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reason, as per proviso Section 125 Cr.P.C., wife is not entitled to get maintenance. Though it is stated by the learned counsel for the respondents that due to harassment and torture made by the petitioner and their family members, she left the matrimonial home, but the petitioner is always ready to take back her to matrimonial home. He has given undertaking before this Court with regard to the same, whereas the first respondent only not ready to live the petitioner. Though the petitioner admitted Ex.R3-letter and Ex.P37-reply letter, he has not substantiated that after the receipt of Ex.P37, he has taken effective steps to take back the respondents to matrimonial home. Petitioner alone was examined as R.W.1 and none of the witnesses have been examined in M.C.Case, on the side of the petitioner to prove that he has taken effective steps to take back the respondents to matrimonial home after the receipt of reply letter Ex.P37. This Court finds that the petitioner has not proved that he has taken effective steps to take back the respondents to matrimonial home. As far as the income of the petitioner is concerned, though he has stated that he lost his job, he has admitted in his affidavit of assets and liabilities that he is working as Lab Assistant and earning monthly income of Rs.10,000/-. Though the first respondent in her proof affidavit has stated that



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the petitioner is doing business and earning sum of Rs.80,000/- per month and besides that the petitioner owning many immovable properties, no document has been produced with regard to the same. According to the first respondent, at the time of marriage, the petitioner is working as software engineer and drawing a monthly salary of Rs.55,000/- per month. The petitioner has also deposed that during the year 2013 he resigned his job. However, the same was disputed by the respondent. The first respondent admitted that she is working in private school and getting a salary of Rs.18,500/- and after deduction she is getting a salary of Rs.10,000/- per month. Further the petitioner put suggestion before the first respondent that she is getting a salary of Rs.30,000/- and the same was denied. She admitted that she is working in school and children are also studying in the same school and she spent 50% of salary for school fees. First respondent has also admitted that she is also a graduate and she is working as teacher. Section 125 Cr.P.C clearly states that when the wife is unable to maintain herself and when the husband is a man of means and despite having means, failed to maintain his wife, the wife is entitled for maintenance. Where as in this case, the first respondent/wife is also graduate and she is working as a teacher and



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she is not falls under the ingredients that she is unable to maintain herself.

The first respondent has not proved the exact income of the petitioner.

7. Therefore, under the facts and circumstances, the first respondent is not entitled to get any maintenance amount. Since the children are with the first respondent, she has to provide food and education to the children. Petitioner is a graduate and he is a earning member, he is liable to pay maintenance to the children. Both the petitioner and the first respondent are well educated and they are able persons, both are liable to maintain their children. Therefore, order of maintenance amount of Rs.10,000/- each to the second and third respondents are reasonable.

8. In view of the above discussion, order dated 11.03.2022 passed by the II Additional Family Court, Chennai with regard to the maintenance amount of Rs.5,000/- as monthly maintenance to the first respondent is set aside and monthly maintenance amount of Rs.10,000/- each to the second and third respondents are confirmed. Accordingly, the Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petition is closed.



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Index:yes/No

Internet:yes/No

To

The II Additional Family Judge,
II Additional Family Court,
Chennai.

P.VELMURUGAN, J.

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