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Criminal Revision Case No.437 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

Coram:

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

Criminal Revision Case No.437 of 2020 and
Crl.M.P.No.3456 of 2020

M.Moshin Khan

... Revision Petitioner

Vs.

1. Sharmila Banu

2. Minor M.Amirah Gulshan

3. Minor Amid Muhammad

(Minor Children are represented by their natural
guardian and mother Sharmila Banu-R1)

... Respondents

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Code of Criminal Procedure praying to set aside the order in M.C.No.154 of 2017 dated 17.10.2019 on the file of the learned VI Additional Family Judge, Family Court, Chennai and call for the records.

For Petitioner : Mr.A.Dakshinamoorthy

For respondents : Mr.G.R.Hari for
Mr.S.Prakash



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ORDER

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The Criminal Revision Case has been filed seeking to set aside the order of maintenance passed in M.C.No.154 of 2017 dated 17.10.2019 on the file of the learned VI Additional Family Judge, Family Court, Chennai.

2. The petitioner is husband and the 1st respondent are husband and wife and the 2nd and 3rd respondents are their minor children.

3. The respondents filed a maintenance case against the petitioner under Section 125 Cr.P.C. before the VI Additional Family Court, Chennai, claiming a sum of Rs.30,000/- to the 1st respondent and Rs.30,000/- each to the 2nd and 3rd respondents. The Judge, Family Court, after enquiry ordered a sum of Rs.15,000/- to the 1st respondent and Rs.5,000/- each to the 2nd and 3rd respondent towards monthly maintenance and in total a sum of Rs.25,000/- was ordered to be paid to the respondents by the petitioner. Challenging the said order of



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maintenance, the respondent therein has filed the present revision before this Court.

4. The learned counsel for the petitioner would submit that respondents have not proved the earning capacity of the petitioner and there is no findings regarding the earnings of the petitioner and without ascertaining the earning capacity of the petitioner, the Judge Family Court has awarded a sum of Rs.25,000/- as maintenance to the respondents. He would submit that the revision petitioner lost his employment and at present he is under the care and support of his relatives for his survival. The Judge, Family Court has failed to appreciate the evidence of the revision petitioner that he become jobless because of the cruelties exerted on him by the 1st respondent and her father. The Judge, Family Court came to the conclusion that the revision petitioner quitting his job with disinterest to maintain the respondents and even without any cross examination by the respondent side in that aspect. The revision petitioner has to take care of his aged mother out of



his meagre income. He would further submit that the Family Court failed to see the evidence of the 1st respondent that she filed lots of criminal cases against the revision petitioner and once she also attempted to commit suicide and her wilful desertion and erred in coming to the conclusion that he did not prove the desertion of the 1st respondent. Therefore, the findings of the Family Court is perverse. Since the 1st respondent left the matrimonial home without any valid reason, she is not entitled to get any maintenance under Section 125 Cr.P.C. Further the 1st respondent has not proved the exact earnings of the petitioner as on date and therefore, the order of maintenance to the 1st respondent is perverse.

5. The learned counsel for the respondents would submit that the petitioner was earlier working in abroad and subsequently after coming from abroad, he is working in a leading IT Company namely HCL Limited and earning monthly salary of Rs.2,00,000/- per month and apart from that he has a building worth about Rs.1 Crore and getting rental income from the said property which situated in Pudur and in addition to



that, he is also having landed properties. The husband/petitioner, the mother-in-law and sister-in-law of the 1st respondent, ill-treated the 1st respondent initially gave a sum of Rs.8,50,000/- for purchase of property in the name of the 1st respondent and later it was found that the petitioner purchased the property in the name of his sister and started demanding more amount from the 1st respondent. Since the 1st respondent was unable to bring the said amount, she was put to unbearable torture by the petitioner and his blood relations and the 1st respondent was physically tortured by pulling her hair, confining her in room withholding food and she was abused using unparliamentary words and sometime later, the servant maid was terminated purposefully and thereby, the 1st respondent was forced to do all the household work. Therefore, the petitioner only caused mental and physical cruelty on the 1st respondent and driven her out from the matrimonial home. He would further submit that the petitioner has got sufficient means and despite having sufficient means, he neglected to maintain the respondents who are unable to maintain themselves. The trial Court rightly appreciated the evidence and on



finding that the petitioner did not prove that he is jobless and he has no means, ordered maintenance to the respondents. Therefore, there is no perversity in the appreciation of evidence by the Family Court. Even as per the decision of the Hon'ble Supreme Court, the wife has to be maintained par with the status of the husband. However, the trial Court ordered only Rs.15,000/- to the 1st respondent and Rs.5,000/- each to the 2nd and 3rd respondents who are school going children. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

7. The relationship of the parties is not in dispute. The petitioner is living separately and the respondents are living separately which is also not in dispute. The respondents had filed a case for maintenance from the petitioner before the Family Court. Though the respondents had sought



for Rs.60,000/- towards monthly maintenance, the trial Court after enquiry, ordered only Rs.25,000/- per month as maintenance to the respondents. According to the respondents, the petitioner was working in abroad and subsequently, he came to India and working in HCL Limited and getting salary of Rs.2,00,000/- per month and apart from that, he is also having properties and getting rental income and despite having sufficient means, he neglected to maintain the respondents, whereas the petitioner has not proved that the respondents are able to maintain themselves. Further the petitioner has not filed the affidavit of Assets and Liabilities to prove that he left the job and he is a penniless man and he is unable to maintain himself. Further, the 1st respondent has clearly stated that the petitioner caused mental as well as physical cruelty on her and she was driven out from the matrimonial home by the petitioner, whereas the petitioner has not proved that 1st respondent left the matrimonial home on her own volition without any valid reason.

8. Further, the Judge, Family Court, clearly observed that Ex.P.5/bank statement of the respondent in HDFC Bank shows the



payment of salary made by the company lastly on 24.04.2018 in two spells as Rs.54,905.05/- and Rs.87,597.69/- and the salary of the respondent/petitioner herein credited by HCL is ranging from Rs.77,673 to Rs.92,825/- as seen from Ex.P.20/Income Tax Report and therefore, it is clear that the respondent/petitioner herein was working with HCL from 05.04.2012 to 16.04.2018. Further, the Judge has observed that when Ex.R.3/Experience Certificate dated 25.04.2018 does not disclose that the respondent therein was expelled from the HCL company due to his default or for not achieving the target and when the company is wishing the respondent all the best in his endeavors, it would prove that he was not expelled from his job due to inefficiency or deficiency or illness but due to his own wish and will. The respondent/petitioner herein quitting job amply proves his disinterest to maintain the petitioners/respondents herein. The Family Court on finding from the oral and documentary evidence that the petitioner is having sufficient means, ordered only Rs.25,000/- towards monthly maintenance to the respondents herein.



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9. This Court does not find any perversity in the order of the Family Court in awarding a sum of Rs.25,000/- per month towards maintenance to the respondents and it is very meagre amount. Considering the facts of the case, this Court finds no merit in the revision and the revision is liable to be dismissed.

10. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

31.01.2023

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Index: Yes/No

To

VI Additional Family Judge,
Family Court, Chennai



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