

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.R.C.No.205 of 2016

Durai @ Duraisamy

...Petitioner/ Respondent

Vs.

1.D.Bharathi

2. Minor.D.Rithika

...Respondents/ Petitioners
(represented by her mother/1st respondent)

PRAYER: The Criminal Revision filed under Section 397 r/w 401 Cr.P.C., seeking to call for the records relating to the order dated 30.06.2014, made in M.C.No.7 of 2014, by the learned Family Court, Erode, and set aside the same.

For petitioner : Mr.T.Gowthaman

For Respondents: Mr.V.S.Kesavan

O R D E R

The criminal revision has been filed by the petitioner, against the order dated 30.06.2014, passed in M.C.No.7/2014, on the file of the learned Family Court, Erode, directing the petitioner/respondent to pay a sum of Rs.3,000/- to the 1st petitioner/1st respondent and Rs.2,000/- to the 2nd petitioner/2nd respondent, towards the maintenance.

2 For the sake of convenience, the parties are referred to as husband and wife. The wife has filed an application in M.C.No.7/2014, seeking maintenance, on the file of the Chief Judicial Magistrate, Erode. It was averred that the husband was working as a driver in the Electricity Board, on contract basis and was earning a salary of Rs.8,000/- per month and further he had been earning a sum of Rs.3,000/- per month by working as a driver on Saturdays and Sundays, and also earning additional income of Rs.15,000/- per month as interest by running finance business and thereby, the wife had filed a petition to claim maintenance, at the rate of Rs.3,000/- for herself and her child.

3 The husband had filed a counter, wherein the marriage and the birth of the child were also admitted by him. However, the other allegations of demand of Rs.25,000/- towards additional dowry was denied. The allegations of cruelty was also denied and income of the respondent as Rs.25,000/- per month was also denied. The Trial Judge, taking into consideration, the avocation of the husband as a professional driver, had fixed income as earning Rs.500/- per day as minimum wages. Based on which, the Trial court had directed the husband to pay a sum of Rs.3,000/- to the wife and Rs.2,000/- to the child and the amount was directed to be paid on or before 5th day of every month.

4 Against which, the present revision has been filed.

5 The learned counsel for the petitioner would submit that the Trial Judge erred in allowing the petition without appreciating the facts and circumstances of the case and had on mere assumptions and presumptions had fixed the income at Rs.500/- as minimum wages for a driver and thereby, fixed the monthly income at Rs.15,000/- per month and thereby, fixed the maintenance at Rs.5000/- for the wife and child. The learned Judge failed to note that there may be days that the petitioner may not be without work and would further submit that no evidence has been let in by the wife to prove that the petitioner/husband was earning a monthly income of Rs.35,000/- per month and would pray for setting aside the order.

6 The learned counsel for the 1st respondent/wife would submit that the fact of the petitioner working as a driver has not been denied and that the Trial Judge, has fixed the income of the husband at Rs.15,000/- per month based on the avocation and that he will be earning a sum of Rs.500/- per day and thereby, directed him to pay maintenance of Rs.3,000/- to the wife and Rs.2,000/- to the child which is proper and fair.

7 Admittedly, the husband as working as driver, the Trial Judge, taking into consideration, the profession of the husband and also fixing an amount, the husband is able to earn Rs.500/- per day as minimum wages has fixed the monthly income as Rs.15,000/- as monthly maintenance and awarded at Rs.3,000/- for the wife and Rs.2,000/- for the child as monthly maintenance.

8 I do not find any infirmity in the finding of the Trial Judge, fixing the above amount as maintenance. In considered the opinion of this Court, the order passed by the learned Magistrate, needs no inference.

9 Accordingly, this Criminal Revision Petition is dismissed.

10 At this juncture, the learned counsel for the petitioner would seek one month time to deposit the arrears amount. Time is granted by one month from the date of receipt of a copy of this order to deposit the entire arrears and thereafter, the petitioner/husband shall deposit the monthly maintenance at Rs.3,000/- to the wife and Rs.2,000/- to the child on or before 5th of every month. In the event of failure, the respondent/wife is entitled to take steps for recovery of the same in accordance with law.

ssi

Sd/-

Assistant Registrar

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Sub Assistant Registrar

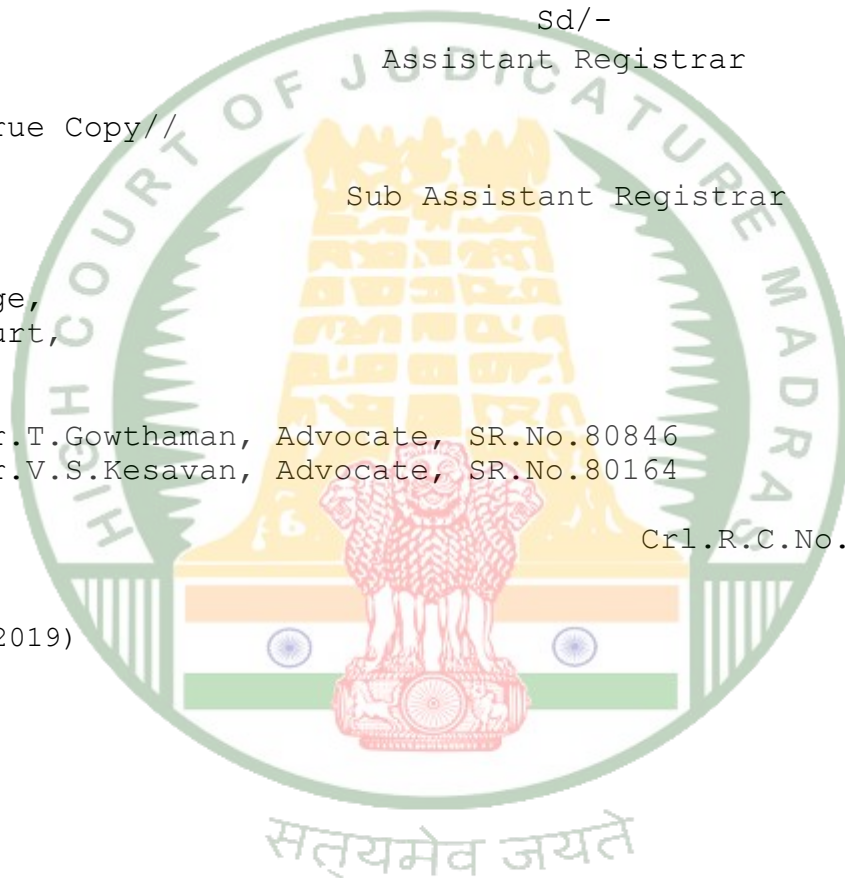
To
1.The Judge,
Family Court,
Erode.

+1cc to Mr.T.Gowthaman, Advocate, SR.No.80846

+1cc to Mr.V.S.Kesavan, Advocate, SR.No.80164

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Kak(12/11/2019)



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