

IN THE HIGH COURT OF JIUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1211 & 1088 of 2020

and

Crl.M.P.No.8439 of 2020

V.M.Gopalakrishnan

.. Petitioner in
Cr.R.C.No.1211 of 2020

1.Swarnalatha @ Latha

2.Minor Maurya

(Minor represented by his mother guardian
and next friend Swarnalatha @ Latha)

... Petitioners in Cr.R.C.No.1088 of
2020/Petitioners

Vs.

1.Swarnalatha @ Latha

2.Minor Maurya

(Minor represented by his mother guardian
and next friend Swarnalatha @ Latha)

.. Respondents in
Crl.R.C.No.1211 of 2020

V.M.Gopalakrishnan

.. Respondent in
Crl.R.C.No.1088 of 2020/Respondent

Prayer in Crl.R.C.No.1211 of 2020: Criminal Revision Case
filed under Section 397 r/w.401 of Cr.P.C., to set aside the
order dated 19.03.2020 made in M.C.No.65 of 2016 on the file
of the learned Family Court, Erode.

Prayer in Crl.R.C.No.1088 of 2020: Criminal Revision Case
filed under Section 397 r/w.401 of Cr.P.C., to set aside the
fair and final order partly allowing the petition in
M.C.No.65 of 2016 on the file of the learned Family Court,
Erode, dated 19.03.2020.

For Petitioner

In Crl.R.C.No.1211 of 2020

: Mr.C.Ramraj

In Crl.R.C.No.1088 of 2020

: No Appearance

For Respondent

In Crl.R.C.No.1211 of 2020

: No Appearance

In Crl.R.C.No.1088 of 2020 : Mr.C.Ramaraj

C O M M O N O R D E R

In Crl.R.C.No.1211 of 2020, the petitioner is the husband and in Crl.R.C.No.1088 of 2020, the 1st petitioner is the wife and the 2nd petitioner is the minor son aged about 7 years.

2. For the sake of convenience, the parties are referred to as per their ranking in the M.C.No.65 of 2016 on the file of the Family Court, Erode.

3. The petitioners have filed a case for maintenance in M.C.No.65 of 2016 before the Family Court, Erode. The Judge, Family Court, Erode, allowed the petition filed by the petitioners and ordered interim maintenance for a sum of Rs.10,000/- per month to the 2nd petitioner payable from January 2020 onwards till the 2nd petitioner attains majority. Challenging the said order, the respondent/husband has filed the revision in Crl.R.C.No.1211 of 2020. Crl.R.C.No.1088 of 2020 has been filed by the petitioners challenging the very same order since no interim maintenance was ordered to first petitioner/wife. Though notice was served on the petitioners and their names are printed in the cause list, there is no representation for them. Since the matters are arising out of a petition filed under Section 125 Cr.P.C, this Court is inclined to dispose of the matters on merits.

4. There is no representation for petitioners/wife and minor son. Heard the learned counsel for the respondent/husband and perused the materials on record.

5. The learned counsel for the respondent/husband submits that the relationship between the parties are not in dispute and it is also not in dispute that both the parties are living separately. The 1st petitioner/wife is earning a sum of Rs.30,000/- p.m. Therefore, she is not entitled for any maintenance as per Section 125 Cr.P.C. It is no doubt true that a wife is entitled to get maintenance from the husband. But, in the present case, the respondent/husband is unable to maintain himself with sufficient means and it is also not in dispute that the first petitioner/wife is working as a teacher and getting salary of Rs.30,000/- per month. Therefore, the learned Judge, Family Court, Erode, dismissed the case in M.C.No.65 of 2016 for the first petitioner/wife and only granted maintenance to minor/2nd petitioner. The main grievance of the respondent/husband is that he is working as a coolie in a private textile and is earning a sum of Rs.300/- per day. If he is not attending the work he will not get any salary. Without considering such aspect, the Court below, awarded interim maintenance of Rs.8,000/- per month payable to the 2nd petitioner/minor from 25.11.2016 the date of filing of the petition till December 2019 and directed to pay a sum of Rs.10,000/- per month to the 2nd petitioner/minor from January

2020 onwards till the 2nd petitioner attains majority.

6. A perusal of the entire materials shows that the relationship of the parties are not in dispute and earning capacity of the 1st petitioner / wife is also not in dispute and the learned Judge, Family Court, Erode, without considering the evidence given by the respondent/husband that he is earning daily wages of Rs.300/-, has fixed the notional income of respondent/husband in a sum of Rs.25,000/- per month considering his age and health. Learned Judge has also held that the respondent/husband would earn Rs.30,000/- after December'2019 and ordered 1/3rd of the said amount as interim maintenance to the minor son/2nd petitioner. In the considered opinion of this Court, fixing of notional income, without any evidence, is unsustainable. Therefore, this Court finds that the learned Judge, Family Court, Erode, fixed the salary based on the assumption and ordered for maintenance. The respondent/husband himself has admitted that he is getting Rs.300/- per day i.e. Rs.9,000/- per month. Therefore, the respondent is directed to pay Rs.3,000/- to the 2nd petitioner from the date of filing of the maintenance petition till the minor attains majority. Since the first petitioner/wife is also an earning member and permanent employee and getting salary of Rs.30,000/- per month, as per law, both father and mother are the natural guardians and both should maintain the minor child. In this case, the 1st petitioner/mother is a earning member and she is getting salary of Rs.30,000/- per month. Therefore, she is not entitled for maintenance from the husband and she is liable to maintain the son. Now, the minor son is in the custody of the 1st petitioner.

7. In the result,

(i) CrI.R.C.No.1088 of 2020 is dismissed.

(ii) CrI.R.C.No.1211 of 2020 is allowed. The respondent/husband is directed to pay arrears of the amount calculated at Rs.3,000/- per month from the date of filing of the case in M.C.No.65 of 2016 till today and directed to pay the future maintenance every month on or before 5th, failing which, the Judge, Family Court, Erode, shall take action as per law. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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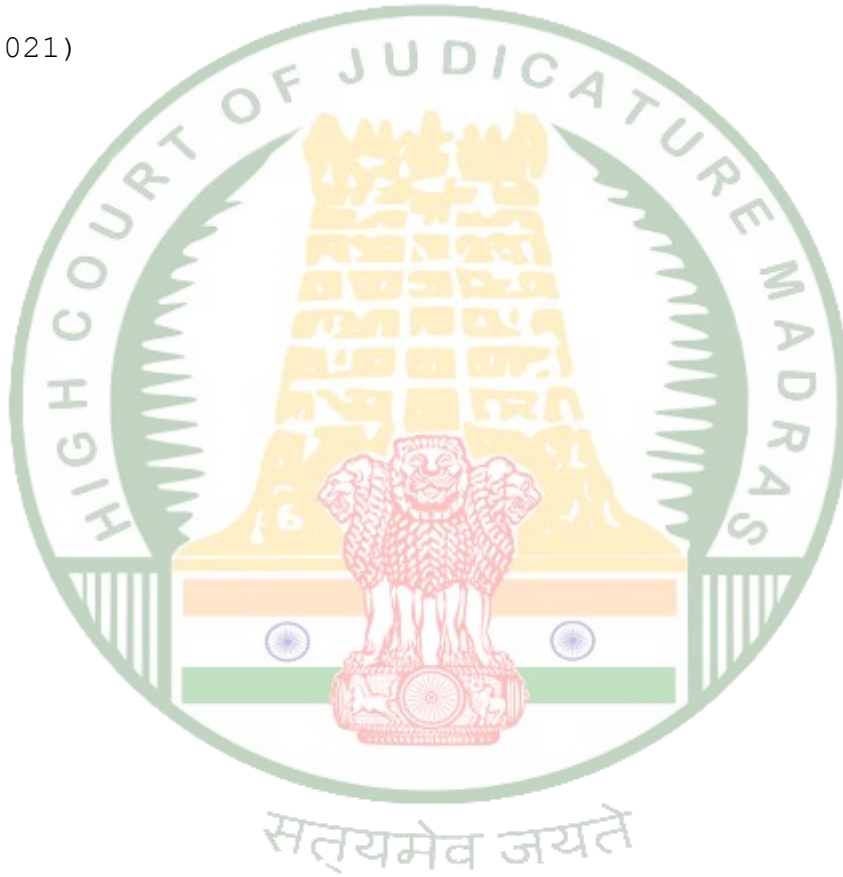
To

The Judge,
Family Court, Erode.

+2cc to Mr.V.S.Kesavan, Advocate, S.R.No. 5209, 5208
+2cc to Mr.M.Guruprasad, Advocate, S.R.No.5110, 5109

Crl.R.C.Nos.1211 & 1088 of 2020
and Crl.M.P.No.8439 of 2020

PMK (CO)
GN (09/04/2021)



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