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Crl.O.P.(MD) No.8755 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2023

Pronounced on : 10.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD) No.8755 of 2021

and

Crl.MP(MD)No.4489 of 2021

Bala Vigneshkumar

... Petitioner/Respondent/ Respondent

Vs.

1. Sivakami

2. Minor Kankshka

... Respondents/Petitioners 1&2

(Minor 2nd Respondent is represented by
the first respondent guardian and next friend)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside maintenance order passed by the Trial Court in M.C.No.55 of 2016 dated 27.03.2019 on the file of the Chief Judicial Magistrate Court, Thanjavur at Kumbakonam, and confirmed by the Additional District and Sessions Court (Fast Track Court), Kumbakonam in Crl.R.P.No.46 of 2019.

For Petitioner : Mr.K.M.Subramanian

For Respondents : Mr.K.Veilmuthu



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ORDER

This petition has been filed to set aside the maintenance order passed by the Trial Court in M.C.No.55 of 2016 dated 27.03.2019 on the file of the Chief Judicial Magistrate Court, Thanjavur at Kumbakonam, and confirmed by the Additional District and Sessions Court (Fast Track Court), Kumbakonam in Crl. R.P.No.46 of 2019.

2. The petitioner is the first respondent's husband and the second respondent's father. The respondents filed M.C.No.55 of 2016 on the file of the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam, under Section 125 Cr.P.C seeking maintenance. By order dated 27.03.2019, the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam, awarded a sum of Rs.15,000/- to each respondent, and the same was challenged before the Additional District and Sessions Court (Fast Track Court), Kumbakonam, in Crl.R.P.No.46 of 2019. The Additional District and Sessions Court (Fast Track Court), Kumbakonam, has confirmed the maintenance award ordered by the learned Chief Judicial Magistrate, Thanjavur, at Kumbakonam. Against the concurrent finding of awarding maintenance, the petitioner has filed the present petition to set aside the maintenance award granted by the Courts below.



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3. The case of the first respondent/wife:

The first respondent married the petitioner on 10.02.2014. Both lived in the matrimonial home in Chennai for some time. On 02.03.2014, the petitioner and the first respondent left India and went to United States of America. In USA, they led their life smoothly. On 08.05.2014, the mother-in-law of the first respondent reached USA. She is said to have humiliated the first respondent citing the reasons for insufficient dowry and also obstructed the first respondent from contacting her parents. The mother-in-law left USA on 01.11.2014. The respondent's family members are said to have given Deepavali Seer, but they failed to give a diamond ring. The mother-in-law informed the same to the petitioner. From then on, the petitioner was not in a cordial relationship with the first respondent and her family members. On 09.02.2015, the petitioner and the first respondent returned to Chennai. In Chennai, the petitioner and his family members did not allow the first respondent to see her parents. On 12.02.2015, the first respondent's parents and relatives went to the petitioner's house to see the first respondent. At that time, the petitioner's mother abused the parents and relatives of the first respondent. Even on 22.02.2015, the petitioner is said to have slapped the first respondent in the public place at Kumbakonam. In the meantime, the first respondent was conceived and the same was informed to the petitioner. The parents of the first respondent agreed



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to give all the remaining Sreedhana as demanded by the petitioner and his family members. So, on 20.05.2015, the first respondent went to America and joined with the petitioner. On 21.06.2015, she returned to India for delivery. The petitioner and his family members never contacted her. On 24.09.2015, the second respondent was born. The same was informed to the petitioner and his family members. They never showed interest in seeing the child and the first respondent. The first respondent came to know that the petitioner is likely to have arrive at Chennai on 07.01.2016. Then a conciliation was made by the relatives and the petitioner agreed to meet the first respondent and the child in the commonplace. So, on 04.06.2016, the first respondent reached Chennai with her child and met the petitioner's parents at Saibaba temple, Mylapore and requested to take them to the matrimonial home. The petitioner's parents insisted the demanded dowry. The first respondent sought time for giving dowry. Thereafter, the petitioner stopped all contact with the first respondent. Again a conciliation was made and the petitioner and his parents agreed to give the jewels of the first respondent. On 17.08.2016, the petitioner's parents, after getting signatures on the blank papers, handed over the jewels of the first respondent to her parents. Due to this the first respondent's father was in terrible mental agony and suffered a heart attack and admitted in the MMM Hospital, Chennai. After discharge, several attempts were made to contact the petitioner, but the petitioner evaded. The first respondent is a B.E., Graduate.



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Before marriage, she was working at WIPRO Pvt. Ltd. The petitioner insisted the first respondent not go to work after marriage. So, she resigned her job. The petitioner is working as a Project Leader in L&T Infotech Ltd., and earning 6500 American Dollars equivalent to Rs.4,00,000/- Indian money. So, the first respondent filed the maintenance petition claiming Rs.1,00,000/- as monthly maintenance to her and Rs.50,000/- for her child.

4. The case of the petitioner/husband:

The petitioner filed the counter denying all the allegations made in the petition. The petitioner stated that he and his family members never demanded any dowry. The first respondent's family members voluntarily gave the jewels and household articles to the first respondent. So, he specifically denied the allegation of demand of dowry. The petitioner further stated that he and his family members treated the petitioner well and also presented two silk sarees worth about Rs.15,000/- on the eve of Deepavali. The petitioner and his family members provided meaningful support to the first respondent's mother at the time of her treatment. They also gave the dress materials to the first respondent's parents. So, they maintained a good relationship with the first respondent and her family members. The jewels of the first respondent are kept in the locker. The allegation of the first respondent that her parents were not allowed to meet her at the Airport



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is not correct. Due to the restriction at the Airport, he instructed as such, after arrival at Chennai, the first respondent's family members visited the petitioner's house and requested to send the first respondent to participate in her relative's marriage. In that process, there was some ruckus caused by the first respondent's relatives in the night hours. On 22.02.2015, the first respondent wanted to go to her parent's house. So, the petitioner dropped the first respondent at Thiruvannamiyur bus stand and arranged for travel bearing the expenditure of Rs.5,000/-. But the first respondent stated a false allegation as if the petitioner left her in lurch at the bus stand. Thereafter, the first respondent joined with the petitioner in America and she left the house in America and reached her parent's home on her own volition. So, the allegation that the petitioner caused cruelty to the first respondent is not correct. After the birth of the child, even though he attempted to contact the first respondent, she refused to contact the petitioner. In the Saibaba Temple, the petitioner and his parents were not allowed to fondle the child/second respondent. After that, the petitioner made many bonafide steps to live with the first respondent and the same was ended in vain. The allegation that the petitioner is receiving more than Rs.4,00,000/- as monthly income is not correct. He is ready to give Rs. 15,000/- as monthly maintenance to the first respondent. Further, he stated that he sent Rs.41,000/- to preserve the stem cells. The petitioner is working in USA only temporarily. The petitioner was unable to bring the first respondent and child to

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USA on the grounds of inability to get the visa. Hence, he seeks for dismissal of the maintenance petition.

5. The learned trial Judge, after considering the evidence and documents filed on behalf of the petitioner, granted a total maintenance of Rs.30,000/-. The learned trial Judge specifically held that the petitioner was never inclined for reunion with the first respondent and the child. Even in the course of the examination, the petitioner was never expressed his willingness to live with her. The learned trial Judge further held that the petitioner never proved his plea that the first respondent was working in a school. The learned trial Judge, after considering the salary certificate of the petitioner Ex.R15 held that the monthly income of the petitioner was Rs.75,400/- and granted Rs.15,000/- as a monthly maintenance to the first respondent and Rs.15,000/- to the second respondent. Aggrieved over the same, the petitioner preferred revision in Crl.R.P.No.46 of 2019 on the file of the Additional District and Sessions Court (Fast Track Court), Kumbakonam. The revisional Court also confirmed the same. Challenging the concurrent finding, he filed the present Criminal Original Petition.

6. The learned counsel for the petitioner submitted that the first respondent on her volition left the matrimonial home and there was no truth in the



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allegation made in the petition that the petitioner and his family members harassed the first respondent and caused cruelty. The learned counsel for the petitioner further submitted that due to the filing of this maintenance proceedings, he was forced to resign from his job in USA and join the job in India and earn only Rs. 75,400/- per month. The learned counsel further filed additional grounds and submitted that even though the petitioner has taken steps for reunion, the first respondent intentionally refused for reunion and proper documents were also filed in the divorce proceedings initiated by the petitioner in HMOP.No.105 of 2018 on the file of the learned Principal Sub Judge, Kumbakonam.

7. The first respondent's family is an affluent family and the first respondent herself is a B.E., Graduate. She is working at Thamarai School and earns sufficient to maintain herself. Hence, there was no necessity to claim the maintenance. The maintenance was filed only to harass the petitioner without any necessity to get the maintenance amount. In sum and substance, they have sufficient means to maintain themselves.

8. Further, the learned counsel for the petitioner submitted that he was inclined to give Rs.15,000/- per month as maintenance to the child only but the counsel on record, while preferring the counter affidavit wrongly stated that he is



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ready to Rs.15,000/- per month as maintenance to the first respondent namely wife.

During the pendency of the maintenance proceedings before the Court below, his mother was suffering from cancer and she subsequently died. Now, he is duty-bound to maintain his age-old father and hence, he seeks the dismissal of the maintenance petition.

9. The learned counsel for the respondents countered the said argument of the learned counsel for the petitioner by making the following submissions:

9.1. The case of the petitioner that he filed additional grounds that he is inclined for reunion, pending the case before this Court, in the presence of the elders and the first respondent shows her adamant attitude by refusing to reunite with him is not bonafide. In this case, at the request of the petitioner, the matter was referred to the Mediation and Conciliation Centre attached to this Bench. He filed the petition to refer the matter to the Court before the Mediation and hence, the mediation proceeding was closed. So, the learned counsel for the respondents submitted that whenever the case was posted for the execution stage, he had taken this plea of reunion to defeat the claim. Further, during the hearing in MC proceedings, he specifically deposed that he was not inclined to live with the first respondent. Further, he specifically stated that in the event of withdrawal of the Maintenance Case, he was unable to decide to live with the first respondent. To



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date, he is continuously proceeding with the divorce case initiated by him. So, in all circumstances, the case of the petitioner that he is ready for reunion is not bonafide and the same has to be decided in the pending divorce proceedings. Even during the pendency of the divorce proceedings, the first respondent is entitled to claim the maintenance for herself and the child.

9.2. The learned counsel for the respondents further submitted that it is the summary proceedings and if the divorce proceedings ended in a compromise, the maintenance proceedings shall be terminated by filing the appropriate petition under Section 128 Cr.P.C. He further submitted that the petitioner has not proved through the evidence that the first respondent is working in a school. The fact that her father is an affluent person, is not a ground to deny the maintenance. Before marriage, she was working at WIPRO Pvt. Ltd., and she resigned from the job after marriage at the instance of the petitioner, Now she is taking care of the child without having any job. The plea of the petitioner that his instruction to pay maintenance to the child is wrongly typed in the counter affidavit filed by his counsel amounts to a stage-managed one for the reason that the counter is in English language and he is a Graduate and working in the USA and other places and hence, his allegation against his counsel itself shows that he did not come



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forward with the truth. The learned counsel further submitted in the additional ground, his mother expired and hence, he only remains to maintain his father and the respondents and he has no sufficient income to maintain the respondents by complying with the orders passed by the Court. The learned counsel further submitted that both the Courts below, on appreciation of evidence and facts concluded that the respondents are entitled to maintenance and there is no perversity in the orders and hence, he seeks for dismissal of this petition.

10. This Court has considered the rival submissions made by both sides and perused the records.

11. The question to be determined in this petition is whether the award of maintenance granted to the respondents by the Courts below requires any interference.

12. The petitioner admitted the relationship of both the first respondent and the second respondent. After the initiation of MC proceedings, he also filed a divorce petition before the jurisdictional Court and the same was pending. Both were making counter allegations against each other. After the birth of the child on 24.09.2015, the petitioner never took any bonafide steps to bring the child and the



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first respondent. The case of the petitioner in the additional ground that he has taken steps for reunion in the presence of the elders and the respondent refused to reunion by showing her adamant attitude has been recorded and the said document in the form of the electronic evidence produced before the Family Court in the divorce proceedings is the matter for evidence in the said proceedings. The said pleadings are not supported with any evidence. The learned counsel for the respondents submitted that there was no bonafides in the submission of the learned counsel for the petitioner that he has taken steps for reunion during the pendency of this proceedings in the presence of the elders of the family. In this case, the petitioner in his evidence, clearly deposed that even in the event of the withdrawal of the maintenance proceedings, he was unable to decide to live with the first respondent. Therefore, the learned trial Judge observed that the petitioner was not willing for reunite based on the evidence. Even in this proceedings, at the instance of the petitioner, this Court referred the matter to the Mediation attached to this Bench and the same was closed with the endorsement of “***The petitioner has given a letter to refer back the case to the Hon'ble High Court. Hence, mediation could not be succeeded***”. Hence, this Court finds force in the submission of the learned counsel for the respondent that whenever the execution of the maintenance of arrears is filed, the petitioner stage managed to show his wrong pretence that he is not at fault. According to the respondents, the petitioner has not paid the entire



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arrears of maintenance amount, even though the order was passed in the year 2019, but he is proceeding with his divorce petition. So as per the Act and the Hon'ble Supreme Court Judgments, he is duty-bound to give the maintenance during the pendency of the divorce proceedings. To facilitate the respondent to contest the case effectively. When the respondents' stomachs are empty, the plea of the respondent to reunion without providing food is not bonafide. So this Court is inclined to decide the matter on merits.

13. The primordial submission of the learned counsel for the petitioner is that the first respondent is a B.E., Graduate working in the Thamarai School, cannot be accepted and deserves to be rejected for want of evidence. Upon the perusal of the evidence and the findings of both the Courts below, the husband has not produced any evidence to prove that the first respondent is working in the School and earns sufficiently. So the husband is duty-bound to maintain his wife and the child. In this aspect, it is relevant to extract the following paragraphs of the Hon'ble Supreme Court judgments in ***Swapan Kumar Banerjee v. State of W.B.*** [2020 19 SCC 342] and ***Rajnesh v. Neha*** [2021 2 SCC 324]:-

13.1. Swapan Kumar Banerjee v. State of W.B., [(2020) 19 SCC 342]

“10. The next issue raised was that the wife being a qualified architect from a reputed university i.e. Jadavpur University, Calcutta would be presumed to have sufficient income. It is



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*pertinent to mention that as far as the husband is concerned, his income through taxable returns has been brought on record which shows that he was earning a substantial amount of Rs 13,16,585 per year and on that basis Rs 10,000 per month has been awarded as monthly maintenance to the wife. **No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.***

Rajnish v. Neha, (2021) 2 SCC 324

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

*90. The courts have held that **if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband.** The courts have provided guidance on this issue in the following judgments:*

90.1. In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in P.Suresh v. S.Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)] , this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252 :



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2015 Cri LJ 3451]

90.2. *In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.*

90.3. *The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694] while relying upon the judgment in Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.”*

14.1. Once marriage is consummated, the wife becomes the husband's family member, and the husband is duty-bound to maintain his wife and child. This moral obligation is emanated from the following words of the Manu:-

“The aged parents, a virtuous wife and an infant child must be maintained even by committing a hundred misdeeds.”

The said moral obligation becomes statutory duty as per Section 125 Cr.P.C. It creates a legal obligation upon the husband to maintain his wife and the child.



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14.2. On the above principles, submission of the learned counsel for the petitioner that the respondent's family is wealthy; hence, her father is contributing his income to the welfare of the first respondent and her minor daughter is not bound to give maintenance amount deserves to be rejected.

14.3. The further case of the first respondent is that her father sustained a heart attack, and he has undergone treatment in the hospital. Even though the first respondent made some stray admissions during her cross-examination regarding the status of the family, they are not enough presume that the first respondent is continuously getting financial support from her father. It is a settled principle that the financial position of the parents of the applicant/wife would not be relevant material to determine the maintenance question. It is pertinent to note the following paragraphs of Hon'ble Supreme Court in **Manish Jain v. Akanksha Jain**, [(2017) 15 SCC 801]:-

“..... the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance.

15. The case of the petitioner the wife left the matrimonial home on her own volition and hence, she is not entitled to maintenance, deserves to be rejected on the ground that there is the allegation made in the petition and the first



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respondent also deposed before the Court that the petitioner and his family members caused harassment and the same was corroborated with the evidence of the PW.2. The said evidence was appreciated by both the Courts below and both the Courts have given a finding that both are living separately out of the family discord. So, the first respondent is entitled to claim maintenance and this Court finds no error in the judgment of both the Courts to interfere.

16. The Hon'ble Supreme Court repeatedly held that concurrent finding rendered by both the Courts below cannot be interfered with either exercising the inherent jurisdiction under Section 482 of Cr.P.C or the revisional jurisdiction, unless some perversity is seen in the finding. More particularly, in the case of the maintenance, the finding of the trial Court relating to the quantum of maintenance and entitlement of maintenance is not ordinarily interfered and the same was fortified by the following ratio of the Hon'ble Supreme Court judgment in ***Rajathi v. C.Ganesan***, [(1999) 6 SCC 326].

“9. We are not going into the question if the High Court on examining the case on merit was correct in coming to the conclusion that the wife was possessed of sufficient means and was able to maintain herself. In the present appeal, we are only concerned to see if the High Court was justified in invoking its inherent powers under Section 482 of the Code and we do not think the High Court was right.



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11. In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this the High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail. The section provides maintenance at the rate of Rs 500 per month. There is an outcry that this amount is too small. In the present case, however, we are quite surprised that the Court granted a paltry amount of Rs 200 per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.”

16.1 Given the above discussion, the first respondent's husband did not make out a case to interfere with the concurrent finding rendered by the Courts below regarding the entitlement of maintenance by the respondent and the quantum of maintenance amount.

16.2. The learned counsel for the petitioner submitted that the petitioner instructed his counsel to undertake to give maintenance of Rs.15,000/- to the child



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and not instructed to give the maintenance amount to his wife. However, the learned counsel mistakenly stated in the counter affidavit that he agreed to give a sum of Rs.15,000/- to the wife. The said submission is in the considered opinion of this Court is not correct, the petitioner made the allegation against his trial Court counsel without any truth. Further, he is a graduate and also worked in U.S.A., and hence, the claim he signed the counter without knowing the contents of the counter is not acceptable.

16.3. In the case there is no legal separation. Birth of child has been admitted. Therefore, The wife continues to be the wife and child is the child of the petitioner till his days. So he is duty-bound to maintain them. In all aspects, this Court does not find infirmity or illegality in the concurrent findings rendered by the Courts below in awarding maintenance to the wife and child. Hence, the question of whether the award of maintenance granted to the respondents by the Courts below requires any interference is answered against the petitioner. As a result, the Criminal Original Petition deserves to be dismissed.

16.4 Because of the above discussion, this Court does not find any merits to dismiss the maintenance petition filed by the respondents. Hence this



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Court confirmed the concurrent findings of the Courts below.

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16.5 Accordingly, this Criminal Original Petition is dismissed with the following direction:-

- i) The maintenance award passed in M.C.No.55 of 2016 dated 27.03.2019 by the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam, confirmed in Crl.R.P.No.46 of 2019 by the learned Additional District and Sessions Judge(Fast Track Court), Kumbakonam, dated 08.07.2020, does not call for any interference.
- ii) The petitioner is now directed to deposit the entire arrears of the maintenance amount within two months from the date of receipt of a copy of this order.

Consequently, the connected miscellaneous petition is closed.

10.07.2023

NCC : Yes / No
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To

1. The Chief Judicial Magistrate,

Thanjavur at Kumbakonam,

2. The Additional District and Sessions Judge(Fast Track Court),

Kumbakonam.

3. The Additional Public Prosecutor,

Madurai Bench of Madras High Court,

Madurai.



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K.K.RAMAKRISHNAN, J.

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