

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3055/2016

D.Revathi : Petitioner
versus

S.Ragupathy : Respondent

PRAYER: Revision filed against the order dated 30.3.2016, in I.A.No.50 of 2015 in HMOP No.63 of 2015 by the Additional Special Judge, Krishnagiri.

For petitioner : Mr.S.M.Muralidharan

For respondent : No appearance

ORDER

The respondent filed an original petition in H.M.O.P.No.63 of 2015, before the Additional Special Judge, Krishnagiri, praying for a decree of divorce. In the said original petition, petitioner filed I.A.No.50 of 2015, claiming interim maintenance. The application was dismissed by the learned trial Judge on the ground that the petitioner ought to have taken recourse to Section 125 Cr.P.C. The learned trial Judge further observed that the petitioner has not produced any documents to prove the income earned by the respondent. Feeling aggrieved, the petitioner is before this court.

2. Heard the learned counsel for the petitioner.

3. The petitioner filed an application for interim maintenance during the currency of the original petition in H.M.O.P.No.63 of 2015. According to the petitioner, she is not having any independent source of income and as such, direction should be issued to the respondent, who is working as a Manager in a petrol bunk, earning a sum of Rs.15,000/-, to pay maintenance. The petitioner in her application, further contended that the respondent is earning another sum of Rs.10,000/- by doing vegetable business and as such, he is having capacity to pay maintenance.

4. The learned trial Judge was of the view that the petitioner should plead and prove the actual income of the respondent even for claiming a small amount by way of maintenance. The fact that the petitioner has not initiated proceedings under Section 125 Cr.P.C. was also taken as a factor to deny maintenance to her.

5. I am not in a position to accept the views expressed by the learned Additional Special Judge, Krishnagiri. The learned trial Judge took a too technical view of the matter and held that the petitioner is not entitled to maintenance. It is a matter of record that even in the counter affidavit filed by the respondent, there was an admission that he is working as a coolie in a petrol bunk for daily wages. Even then, the learned trial Judge shifted the burden of proof on the petitioner and dismissed the application.

I am therefore of the view that the impugned order is liable to be set aside.

6. In the result, the order dated 30 March 2016 is set aside. The application in I.A.No.50 of 2015 is restored to file.

7. The learned Additional Special Judge, Krishnagiri is directed to decide the interlocutory application in I.A.No.50 of 2015 on merits and as per law, uninfluenced by the observations made in the order dated 30 March 2016. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

8. The civil revision petition is allowed as indicated above. No costs. Consequently, M.P.Nos.15472, 15473 of 2016 are closed.

24.10.2016

Index:Yes/no
tar

To
The Additional Special Judge, Krishnagiri.

K.K.SASIDHARAN, J.

(tar)

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