

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	19.01.2021
DELIVERED ON	03.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI**Cr1.RC(MD)No. 312 of 2016**

WEB COPY

S.A. Soosai Thilagavathi ... Petitioner/Petitioner

Vs.

T. Amalraj ... Respondent/Respondent

PRAYER: Petition filed under Section 397 & 401 of the Criminal Procedure Code, against the order, dated 09.02.2016 made in M.C. No. 49 of 2015 on the file of the Family Court, Tirunelveli.

For Petitioner : Mr.S.P. Maharajan
For Respondent : No Appearance

ORDER

This criminal revision case is filed by the petitioner as against the order passed by the Judge, Family Court, Tirunelveli, in M.C.No.49 of 2015, dated 09.02.2016.

2. According to the petitioner/wife, she is living separately and the respondent/husband failed to maintain the petitioner. But, without considering these aspects, the Family Court has dismissed the maintenance petition filed by the petitioner herein seeking maintenance of Rs.12,000/-from the respondent herein/husband. Hence, the revision petitioner is before this Court.

3. The brief fact of the case is that the marriage between the petitioner and the respondent was solemnized at Tirunelveli in Saint Anthonyar Church and out of the wedlock, they are having a daughter. The respondent/husband was working as Conductor in Private Sector. The respondent developed illicit intimacy with the petitioner's sister and failed to maintain the petitioner/wife. Therefore, the petitioner/wife filed an application for maintenance under Section 125 Cr.P.C., directing the respondent/husband to pay a sum of Rs.12,000/-.

4.Heard Mr.S.P.Maharajan, learned Counsel appearing for the petitioner/wife.

5. The learned Counsel for the petitioner contended that the order of the trial Court in failing to consider the contentions of the petitioner that the petitioner/wife is living lonely and the respondent/husband failed to maintain the petitioner/ wife. He



further submitted that the Court below ought to have allowed the petition. Hence, prayed to allow the Criminal Revision Case.

6. This Court paid it's anxious consideration to the rival submissions and also to the available materials.

7. The revision petitioner/wife has filed a petition in M.C.No.49 of 2015 for maintenance of Rs.12,000/-p.m., from the date of petition.

8. After full-fledged trial, the learned Judge, Family Court, Tirunelveli, has dismissed the maintenance petition on the ground that the respondent/husband has no income.

9. Relationship between the parties as husband and wife is admitted by the respondent/husband. On perusal of the order, dated 08.02.2016 in M.C. No.49 of 2015 it reveals that the respondent admitted that he has liability to maintain his wife. But, he resigned his job as bus conductor and he is residing at the house of his daughter. But, it is a bound duty of the husband is that to maintain his wife, even if she had earnings. The respondent further admitted that, if necessary he is going to job. Further, the respondent has not proved that the petitioner has income to maintain herself. No documents on the side of the respondent except some pronote cases are filed by the petitioner. So, she has income to lend money to third parties.

10. This is not regular income, even if it is true. Further, the respondent cannot escape from giving maintenance to his wife. The first and foremost duty of the husband is to maintain the wife and child. He may beg or borrow. But, the Family Court had stated in the Judgment that the husband has good intention to maintain his wife but he has no income. It is wrong analysis. Therefore, this Court is inclined to set aside the order of the Court below.

11. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the learned Judge, Family Court, Tirunelveli, in M.C.No.49 of 2015, dated 09.02.2016, is set aside. Considering the age of the respondent/husband, the respondent is directed to pay a sum of Rs.5,000/-(Rupees Five Thousand Only) to the petitioner/wife, as maintenance, from the date of petition, on or before 5th day of every English calendar month.

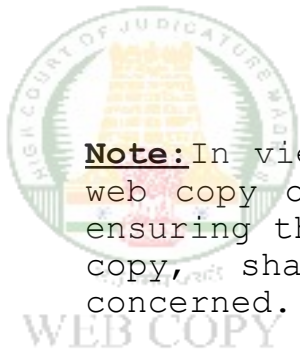
Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Judge,
Family Court,
Tirunelveli.
2. The Section Officer, Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-3204[F] dated 04/02/2021)

Order made in
Cr1.RC(MD)No.312 of 2016
03.02.2021

TP(CO)
TR(10.02.2021) 3P 5C