

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.144 of 2015

G.Soundarajan

.. Petitioner /Accused

Vs.

Chokkammal

.. Respondent/Complainant

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order passed by the 1st Additional Family Court, Chennai, in M.P.No.400 of 2012 in M.C.No.45 of 1996, dated 22.01.2013.

For Petitioner : Mr.D.Nandagopal

O R D E R

Material on record discloses that the respondent-wife has filed M.C.No.45 of 1996, before the learned 1st Additional Family Court, Chennai. At that time, the petitioner was stated to have been working as a Watchman, in Corporation Middle School, Avathanam Pappier Road, Choolai, Chennai-11 and earned Rs.20,000/- per month. A sum of Rs.300/-, per month, has been ordered as maintenance, with effect from 05.03.1998. Contending inter alia that due to escalation in price, medical expenses, to be incurred, wife has filed M.C.No.400 of 2012, to enhance the maintenance from Rs.300/- to Rs.8,000/- per month, under Section 127 Cr.P.C. She has also contended that there was huge accumulation of maintenance amount, by the petitioner-husband.

2. Objecting to the said prayer, the petitioner has contended that respondent-wife was married another person, by name, Selvaraj, in the year 1961 and therefore, he is not liable to pay maintenance and any enhanced amount. The petitioner has also contended that the respondent-wife has also married another person, by name, Venu, in the year 1968. However, before the Court below, he had not substantiated the averments, by filing any document, to prove that the respondent-wife had married twice.

3. The Court below has considered that there was no denial of avocation and earning by the petitioner. Having found that the wife

was not paid maintenance for a long time, expenditure to be incurred for food, shelter, cost of living, etc., the learned Magistrate has enhanced the maintenance from Rs.300/- to Rs.4,000/-, from the date of filing of petition, under Section 127 Cr.P.C. He has directed the petitioner to pay the enhanced maintenance amount to the respondent-wife, on or before 5th of every English calendar month, without fail and further directed the petitioner to pay the arrears of maintenance amount.

4. Though Mr.D.Nandagopal, learned counsel for the petitioner assailed the correctness of the order in M.P.No.400 of 2012, on the grounds that the learned Judge has failed to advert to the averments, made in the counter affidavit, in proper perspective and that M.P.No.400 of 2012, was filed after 10 years, from the date of passing of the order, in M.C.No.45 of 1996, dated 05.03.1998, for enhancement, under Section 127 of the Act, and further contended that the Court below has failed to consider that respondent-wife, was married twice and for the abovesaid grounds, prayed to set aside the impugned order, this Court is not inclined to accept the said contentions.

5. Section 127 of the Code of Criminal Procedure Code, deals with alteration of allowance. The said Section reads as follows:

"(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit: Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on Which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order."

6. In *Ajay Sharma v. Archana Sharma* reported in 2012 CrL.L.J. 873, the Court held that where once an order of maintenance is passed under Section 125 Cr.P.C., the amount can be increased or decreased by change of circumstances of the person receiving, or of the person paying, the amount. Change in circumstances envisaged by this section is of pecuniary or other circumstances of the party paying or receiving maintenance allowed which would justify an increase or decrease of the amount originally fixed. Change in circumstances would also mean change in the circumstances of the husband.

7. The contention of the petitioner is that the respondent-wife has married one Selvaraj, in the year 1961 and without dissolution of the marriage, she was again married one Venu, in the year 1968. Though the abovesaid contentions have been made, for denying the prayer for enhanced maintenance, reading of the impugned order in M.C.No.45 of 1996, it could be deduced that no document has been filed before the Court below. However, now in the present revision case, a document has been filed, enclosed in Page 16 of the typed set of papers, suggestive of relationship of the respondent-wife with another person. In the revisional stage, document cannot be introduced as evidence.

8. Though the petitioner has contended that an ex parte order of M.C.No.45 of 1996, passed on 05.03.1998, was later on set aside in M.P.No.489 of 1999, dated 17.06.1999 and subsequently, M.C.No.45 of 1996, itself, was dismissed for default on 25.08.2012, for non-appearance of the wife and in such circumstances, the Court below ought not to have enhanced the compensation from Rs.300/- to Rs.4,000/-, no document has been filed either, before the Court below or before this Court.

9. Further, it has also well settled that while dealing with the application for increase in maintenance, the Magistrate has no jurisdiction to enquire into the conduct of the parties. He has no jurisdiction to correct the clerical errors. Averments made in the counter affidavit, were not substantiated before the Court below. On

the available materials and considering the cost of living, the Court below has enhanced the maintenance amount from Rs.300/- to Rs.4,000/-, to be paid by the petitioner. In the light of the above discussion, this Court is not inclined to interfere with the impugned order.

10. Hence, the Criminal Revision Case is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

True Copy

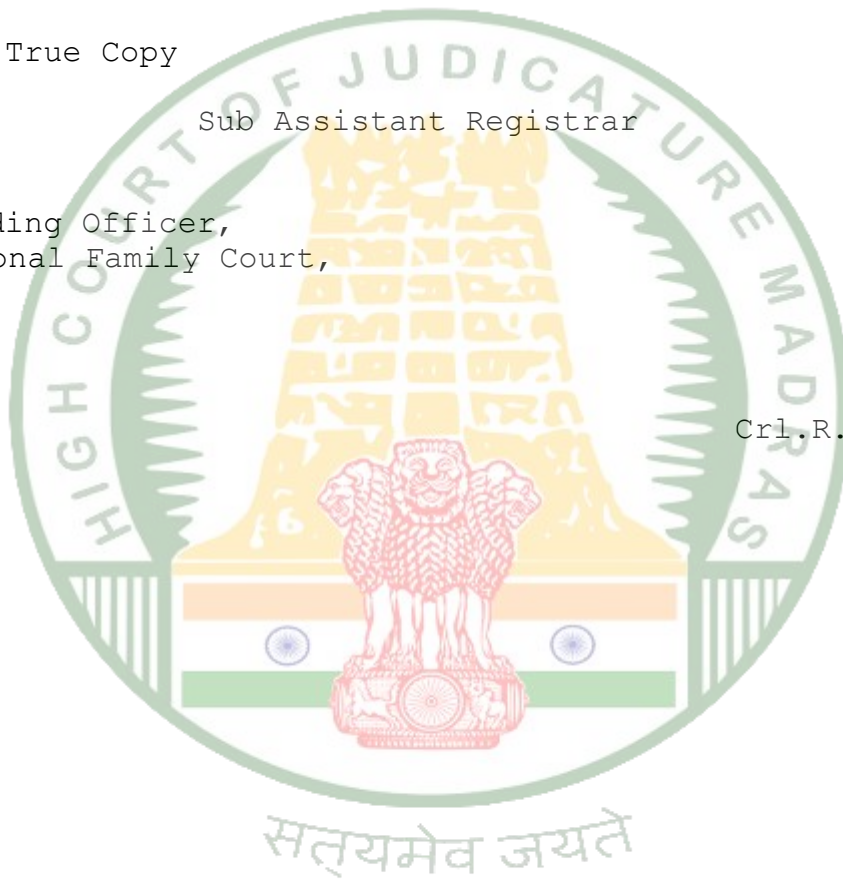
Sub Assistant Registrar

To

The Presiding Officer,
1st Additional Family Court,
Chennai.

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krd 7/4

Crl.R.C.No.144 of 2015



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