



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

WEB COPY

P.Selvaraj

Criminal Revision Case (MD)No.320 of 2011

.. Petitioner

Vs.

1.Amirtharani
2.Thanapackiam
3.Karpagavalli
4.Anburaja

.. Respondents

Revision is filed under Section 397 r/w 401 Cr.P.C. to call for the records relating to the order, dated 21.12.2009 made in Cr.M.P.No.4792 of 2008 in M.C.No.9 of 1990 on the file of the Judicial Magistrate Court No.I, Usilampatty and set aside the same as illegal.

For Petitioner : Mr.B.A.Muruganantham

For Respondents: Mr.R.Alagumani

O R D E R

The first respondent as wife, the respondents 2 and 3 as daughters and respondent No.4 as son, filed the petition for maintenance before the learned Judicial Magistrate for enhancement of the maintenance under Section 127 Cr.P.C. in Cr.M.P.No.4792 of 2008. In M.C.No.9 of 1990, the husband had been ordered to pay a sum of Rs.150/- p.m. to the wife and Rs.25/- p.m. to the petitioners 2 to 4 from 19.08.1991. Claiming that the children have grown and they have to be educated, the petition for enhancement was filed.

2. It was contended that the husband was running a furniture mart and also doing real estate business, the enhancement was asked for. The Court ordered production of age certificate and at the time when this Application came up for enquiry, the first respondent was aged about 25 years, the third respondent was aged about 22 years and the fourth respondent was aged about 21 years.

3. But giving a finding that the petitioners 2 and 3 being daughters and as they are eligible to claim maintenance until their marriage, the Court held that even though they are majors, their application for enhancement of maintenance is maintainable, but the fourth respondent, being the son, is not eligible to claim maintenance, after the attainment of majority. The amount of maintenance ordered to the wife was enhanced from Rs.150/- to Rs.1,000/- and the amount of maintenance ordered to petitioners 2 and 3 was enhanced from Rs.25/- to Rs.1,000/- (each) and the petition was dismissed only as against the fourth petitioner, the major son. This order is under challenge in this revision petition.

4.It is the contention of the learned counsel for the revision petitioner that no summon was served in the application for enhancement and the husband came to know about the same only when he received notice in the execution proceedings.

5. It is not in dispute that Anburaj, the fourth petitioner in Cr.M.P.No.4792 of 2008 is a major and therefore, his application was rightly dismissed by the lower Court. So far as the petitioners 2 and 3 are concerned, it is conceded that they got married and they are living



with their respective husbands and as such, the claim made by the married daughters is not maintainable and the order passed by the learned Judicial Magistrate cannot be executed at this stage.

6. The only claim to be considered is the claim of the first respondent / wife. The learned counsel representing for the wife would submit that the petty amount of Rs.1,000/- ordered in the year 2008 is not sufficient in the year 2015 and therefore, it is a case for enhancement. The claim for enhancement cannot be raised in a proceeding challenging execution. It can be claimed only in an appropriate proceedings under Section 127 Cr.P.C., In such proceedings, the enhancement can be ordered only when the change in circumstances, namely, the enhancement in the financial capacity of the husband is proved. Therefore, it is open to the wife to move the Court under Section 127 Cr.P.C. seeking the claim for enhancement of maintenance.

7. In the result, the claim made by the daughters are set aside and the order is executable only as against the first respondent / wife. The Criminal Revision Petition is ordered accordingly.

sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate Court No.I, Usilampatty.

+1cc to M/s.B.A.Muruganantham, Advocate SR.No.62482

+1cc to M/s.R.Alagumani, Advocate SR.No.63591

sm:sks-rr:18.11.2015:2P/4C

Cr1.R.C.(MD)No.320 of 2011