

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN**

MONDAY, THE 18TH DAY OF NOVEMBER 2013/27TH KARTHIKA, 1935

RPFC.No. 84 of 2011

**CMP.NO.156/2010 IN MC NO. 9/2009 OF FAMILY COURT,
THIRUVANANTHAPURAM DATED 26-02-2011**
.....

REVISION PETITIONER/RESPONDENT:

**SANTHOSH KUMAR, VILAYIL VEEDU,
KARIMANAL P.O, PULLUKAD, MANVILA,
THIRUVANANTHAPURAM (IN CENTRAL PRISON,
THIRUVANANTHAPURAM & IS REP. BY HIS MOTHER OMANA,
W/O.SUDHAKARAN, VILAYIL VEEDU, KARIMANAL P.O.,
PULLUKAD, MANVILA, THIRUVANANTHAPURAM).**

**BY ADVS.SRI.D.KISHORE
SMT.MINI GOPINATH**

RESPONDENT(S)/STATE & PETITIONER:

- 1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. RAJI, PULIMOOTTIL THARA VEEDU,
KARIKKAKOM, BEACH P.O., THIRUVANANTHAPURAM.**

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 18-11-2013 ALONG WITH RP(FC)NO.34/2010
AND CONNECTED CASES,THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

Kss

K. HARILAL, J.

R.P. (FC) No.84 of 2011

Dated this the 15th day of July, 2015

ORDER

The revision petitioner is the respondent in C.M.P. No.156 of 2010 in M.C. No.9 of 2009 on the files of the Family Court, Thiruvananthapuram. The above C.M.P. was filed under Sec.125(3) of the Code of Criminal Procedure to issue warrant for levying the amount due to the 2nd respondent towards maintenance allowance which was ordered to be paid by the revision petitioner. The revision petitioner was arrested and produced before the court and sent to the jail, for imprisonment for 6 months. This order is challenged in this revision petition.

2. Heard the learned counsel for the revision

petitioner and the learned counsel for the 2nd respondent.

3. The only contention raised in this revision petition is that irrespective of the number of defaults that are committed in paying each month's maintenance in Sec.125(3) of the Cr.P.C., there is a cap of one month on the total period of imprisonment that can be imposed and that therefore, the sentence of imprisonment for 6 months is illegal.

4. The above question was considered by a Division Bench of this Court on a reference and affirmed the principle laid down in the decision in Sundaran v. Sumathi [2006 (3) KLT 725] which is extracted below:

“(a) If there is no payment of maintenance due for 'n' number of months the defaulter in one Execution Petition can be sentenced to imprisonment upto a maximum of 'n' months, provided 'n' does not exceed 12.

(b) If there is breach of payment of maintenance due for one particular

month - notwithstanding the fact that such payment was not made for 'n' months from the date on which it became due, the defaulter can be sentenced only to maximum imprisonment for one month and not 'n' months. Even when the breach in respect of one particular month continues for any length of time, the maximum sentence for breach of the liability to pay one month's maintenance continues to be one month only”.

Since the impugned order does not refer to the nature and particulars of the alleged default, the same is set aside and the matter is remitted to the court below for fresh consideration, in view of the aforesaid principle laid down in Sundaran's case. The court below shall pass an order afresh, at the earliest, if the matter in issue is still alive.

Sd/-

(K. HARILAL, JUDGE)

Nan/