

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. 142 of 2011

**CMP.NO.97/2010 IN MC NO.400/2005 OF FAMILY COURT,
ALAPPUZHA DATED 15-06-2011**

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REVISION PETITIONER(S)/COUNTER PETITIONER:

**RAJENDRAN,
PALANIKUNNATHIL VEETIL, THAIMARAVUMKARA MURI,
KUTTOOR VILLAGE, THIRUVALLA TALUK.**

BY ADV. SRI.S.HARI KRISHNAN

RESPONDENT(S):RESPONDENTS/COMPLAINANT:

- 1. AJITHAKUMARI K.R,KRISHNALAYAM VEETIL,
PULIYOOR MURI, PULIYOOR VILLAGE,
CHENGANNUR TALUK - 685 001.**
- 2. ANANTHU R.NAIR(MINOR),S/O.AJITHAKUMARI,
KRISHNALAYAM VEETIL, PULIYOOR MURI, PULIYOOR VILLAGE,
CHANGANNUR TALUK - 685 001.**
- 3. ASWATHY (MINOR),D/O.AJITHAKUMARI,
KRISHNALAYAM VEETIL, PULIYOOR MURI,
PULIYOOR VILLAGE, CHANGANNUR TALUK - 685 001.**

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

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K. HARILAL, J.

R.P. (FC) No. 142 of 2011

Dated this the 15th day of July, 2015

ORDER

The revision petitioner is the respondent in C.M.P. No.97 of 2010 in M.C. No.400 of 2005 on the files of the Family Court, Alappuzha. 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 respondents 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 15 days for the non-payment of Rs.10,000/- to the respondents. This order is challenged in this revision petition.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

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 15 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)

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P.S. to Judge