

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

RPFC.No. 360 of 2015 ( )

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(AGAINST THE ORDER IN CRL.M.P.517/2013 IN M.C.156/2010  
OF FAMILY COURT, PALAKKAD)

REVISION PETITIONER/RESPONDENT:

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KRISHNANKUTTY, AGED 36 YEARS  
S/O.MARUTHAN  
RESIDING AT MAYA NIVAS, KENNATHPARAMBU  
PIRAYIRI POST, PALAKKAD TALUK  
PALAKKAD DISTRICT.

BY ADVS.SRI.T.MADHU  
SMT.RADHIKA P.GOPINATH

RESPONDENT/PETITIONER:

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PRASANNA, AGED 30 YEARS  
RESIDING AT KINAYATHODI HOUSE  
PIRAYIRI POST, PALAKKAD TALUK  
PALAKKAD DISTRICT - 678 004.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON  
16-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

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R.P.(F.C.) No.360 of 2015  
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Dated this the 16<sup>th</sup> day of October 2015

**ORDER**

The revision petitioner is the counter petitioner in M.C. No.156 of 2010 on the files of the Family Court, Palakkad.

2. The court below directed the revision petitioner to pay an amount of Rs.3,000/- per month to the petitioner before the court below, who is the respondent herein.

3. Thereafter, the respondent herein filed C.M.P. No.517 of 2013 before the court below praying for execution of the order impugned. The said C.M.P was filed for realisation of arrears of maintenance for 12 months.

While so, the court below ordered warrant against the revision petitioner. The revision petitioner was arrested and produced before the court below on 11.9.2015. The court below sent him to jail for a period of one year. The said order is under challenge in this revision petition.

4. Service is complete. There is no appearance for the respondents.

5. Heard the learned counsel for the revision petitioner.

6. The learned counsel for the revision petitioner has argued that before issuing warrant of arrest against the revision petitioner, the court below did not issue warrant for levying the amount under Section 421 Cr.P.C. and hence, the order impugned cannot be sustained for that

reason alone. It has been further argued by the learned counsel for the revision petitioner that the court below was not justified in awarding imprisonment for a term of one year in the execution of warrant, and in the said circumstances also, the order impugned cannot be sustained.

7. In this context, it is profitable to extract the provisions of Section 125(3) Cr.P.C, which is extracted hereunder:

“125. (1)....

(2)....

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each months's [allowance for the

maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(4).....

(5).....”

8. It is clear from the wordings of sub clause (3) of Section 125 Cr.P.C. that the sentence can be imposed only for the amount remaining unpaid after the execution of the

warrant. Thus, it is clear that warrant should be issued under Section 421 Cr.P.C. for levying the amount both by attachment and sale of movable and immovable properties of the defaulter, before ordering the arrest and imprisonment of the defaulter. However, there is nothing to indicate that warrant was issued under Section 421 of the Code for realising the amount before ordering the arrest and imprisonment of the revision petitioner. For the said reason, the order impugned cannot be sustained.

9. It is clear from the language of sub clause (3) of Section 125 of the Code that the power of the Court is only for awarding the imprisonment for a term which may extend to one month or until payment, if sooner made. This power of the Magistrate cannot be enlarged and

therefore, the only remedy that would be available to the wife is to approach the Magistrate again for similar relief.

10. The Apex Court in **Shahada Khatoon v. Amjad Ali** [2000(1) KLT 696] held that by no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month under Section 125(3) Cr.P.C. Since the court below had awarded the jail term for one year, the order impugned cannot be legal and correct on that reason also. In the said circumstances, I am satisfied that the order impugned cannot be sustained and consequently, I set aside the same.

In the result, this revision petition stands allowed and the order impugned stands set aside. Since the revision petitioner had already undergone the jail term for more

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than one month, as per the order of the court below in C.M.P. No.517 of 2013 in M.C. No.156 of 2010, no purpose will be served by remitting C.M.P. No.517 of 2013 to the court below for passing the order afresh. In the said circumstances, I am not inclined to remit the matter to the court below. The revision petitioner has been in jail from 11.9.2015 onwards. Therefore, the revision petitioner shall be released from the jail forthwith, if his detention is not necessary in any other case.

Sd/

**B.SUDHEENDRA KUMAR,  
JUDGE**

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PA to Judge

The accused namely Krishnankutty, S/o.Maruthan, Maya Nivas, Kenathparambu, Palakkad who is the counter petitioner in C.M.P. No.517 of 2013 in M.C. No.156 of 2010 on the files of the Family Court, Palakkad was arrested as per the order of the above said court in C.M.P. No.517 of 2013. This Court has set aside the order in C.M.P.No.517 of 2013 and ordered to release him.

Therefore, the Superintendent, Central Prison, Viyyur

is directed to release the above person, namely Krishnankutty forthwith, if his detention is not necessary in connection with any other case.

part of order

The Registry shall communicate the gist of the order to the Superintendent, Central Prison, Viyyur for compliance of the direction in this order.