

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.812 of 2013

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ORDER:

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The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., aggrieved by the order dated 28.03.2014 passed in CrI.M.P.No.1081 of 2012 in M.C.No.18 of 2008 on the file of the Judicial First Class Magistrate, Vayalpadu, Chittoor District.

The facts in issue are as under:

The respondent Nos.2 to 4 herein filed M.C.No.18 of 2008 claiming maintenance under Section 125 Cr.P.C. claiming maintenance. The said maintenance case was allowed by granting monthly maintenance at Rs.2,000/- to respondent No.2 and Rs.1500/- each to respondent Nos.3 and 4 from the date of petition ie. from 18.09.2008. Since the petitioner herein failed to pay any amount, respondent Nos.2 to 4 filed CrI.M.P.No.1081 of 2012 seeking payment of arrears of maintenance, failing which a request was made for issuance of distress warrant. Pursuant to the said application made, the petitioner herein contested the said matter and thereafter the Court passed the following order on 28.03.2014.

“Petitioner present. Respondent produced from District Jail, Chittoor. Perused the record. The respondent not paid any amount to the petitioner. The respondent not explained sufficient cause for non payment of the amount under Section 125 (3) Cr.P.C. and that the respondent is sent to civil prison for a period of 30 days from 28.03.2013 to 26.04.2013 for default of the amount for November, 2008 payable in December, 2008, call on 26.04.2013.”

Challenging the said order the present revision is filed.

Learned counsel for the petitioner/husband submits that the petitioner is

not liable to pay any past arrears as the same cannot be claimed in one application. He relied upon the judgment of the Apex Court in ***Shahad Khatoon and others v. Amjad Ali and others***, and judgments of this Court in ***Abdul Gafaoor alias Ashan V. Smt. Hameema Khatoon and others*** and ***Pitchika Lakshmi and another v. Pichika Chenna Mallikaharjuna Rao and another*** in support of his plea.

The counsel for the respondent/wife opposed the same and in support of his plea he relies upon the judgment of the Apex Court in ***Shantha @ Ushadevi and another v. B.G.Shivananjappa***.

In Abdul Gafaoor case (2 supra) a bench of this Court while dealing the provision of Section 125 (3) Cr.P.C. held that “from bare perusal of the provision, it becomes clear that a person against whom an order is made does not become liable to imprisonment on passing of an order of maintenance, his liability to suffer imprisonment only starts if he fails to respond to a warrant issued under Section 125 (3) Cr.P.C. for payment of maintenance. A warrant has to be issued under Section 125 (3) Cr.P.C. for payment of maintenance, when an application is made by the person who has been held entitled to maintenance under Section 125 of Cr.P.C. When such a warrant is issued for making payment of maintenance it has to be levied as the amount due in the manner provided for levying fines and if this warrant is not responded by making the payment, then the Magistrate can order imprisonment and the imprisonment in no case can exceed one month. The Court further held that the provision is quite clear and it circumscribes the power of the Magistrate to impose imprisonment for a term which may extend to one month or until the payment, if sooner made. The Court also held that the said power of the Magistrate cannot be enlarged and therefore the only remedy would be after expiry of one month, for breach of non-compliance with the order of the Magistrate the wife can approach the Magistrate again for similar relief. The bench held that by no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month.

In ***Pitchika Lakshmi*** case (3 supra), the Court accepted the principles laid down in the judgment referred to above and held that when the warrant is issued under Section 125 (3) Cr.P.C. there can only be one imprisonment for a

maximum period of one month.

Keeping in view the principles laid down by the Courts, it has to be decided whether in a warrant issued under Section 125 (3) C.P.C., the petitioner can be detained for more than one month and whether successive applications are necessary for payment of maintenance awarded in the main M.C.

A perusal of the orders passed by the trial Court indicate that non-bailable warrants were issued, pursuant to which the petitioner herein was produced before the Court. He failed to give any explanation for non-payment of amount awarded under Section 125 Cr.P.C. Hence, he was sent to imprisonment for a period of 29 days. Therefore, the pre-condition for sending defaulter to jail namely issuance of warrant and giving an opportunity to explain the circumstances to which he could not pay the amount were sufficiently complied with.

The order passed by the trial Court also shows that the petitioner was imprisoned for default in payment of maintenance for the period of one month. The question that arises for consideration is whether there has to be separate application for each month's default or whether one application is sufficient bringing to the notice of the Court the default in payment of money.

In the instant case the M.C.No.18 of 2008 filed by the wife and her two minor children was allowed on 28.02.2012, granting maintenance @ Rs.2,000/- to the first petitioner and Rs.1,500/- each to the second and third petitioners therein. No material is placed before the Court to show as to whether any revision was filed challenging the said order. The order was passed on 28.02.2012 and the application claiming arrears of maintenance i.e. CrI.M.P.No.1081 of 2012 came to be filed within a period of one month thereafter ie. in March, 2012 enclosing a copy of the order. The said application ofcourse is a composite application, but the orders passed by the Court which is placed before the Court would show that the period for which the amount of maintenance was ordered to be paid was for one month only and sentence of imprisonment was ordered in default of one month's maintenance. As stated above, the said application was filed within a period of one month from the date of the final order passed in the M.C. The husband would be liable to pay maintenance only from the date when the order of maintaining maintenance becomes final. No material placed before the Court

would show that there was any interim order pending the M.C. Therefore, if February, 2012 is to be taken as the date on which the amount became due, the composite application filed would be well within the time stipulated.

The issue as to whether a single application is claiming arrears of maintenance for different periods never came up for consideration in the judgment referred to above. In *Pitchika Laxmi* case (3 supra) the wife and daughter filed Crl.M.P.No.769 of 2010 under Sections 125 (3) and 128 of Cr.P.C. seeking arrears of maintenance of Rs.2,85,600/- since the first respondent failed to pay the arrears. The learned Judge of the Family Court committed the first respondent to civil prison for one month or till payment of arrears whichever is earlier. The said order of limiting the period of imprisonment for one month only was challenged. Relying upon the Bench judgment of this Court in *Abdul Gafaoor* case (2 supra) the said revision was dismissed.

However in *Shantha @ Ushadevi and another v. B.G.Shivananjappa* the Apex Court dealt with a situation where trial court awarded maintenance at Rs.500/- to the wife and Rs.300/- to the daughter. As the said amount was not paid, the wife filed Crl.M.P.No.47 of 1993 under Section 125 (3) Cr.P.C. claiming an amount of Rs.5,365/- as arrears calculated from January, 1993 to August, 1993. The respondent filed Criminal Revision Petition before the Sessions Court vide Crl.R.P.No.35 of 1993 against the order passed by the trial Court in awarding maintenance. The said R.P. was dismissed on 26.06.1997. Aggrieved by the same, the matter was carried to the High Court of Karnataka by way of filing Crl.R.P.No.2297 of 1997. The said Crl.R.P. was dismissed by the High Court. There after, the wife filed Crl.M.P.No.47 of 1993 claiming arrears of maintenance for the period from January, 1993 to 16.06.1998 for a sum of Rs.46,000/-. The husband deposited an amount of Rs.5,365/- which he was due till 31.08.1993. However, an objection was raised stating that the appellant cannot claim arrears of maintenance beyond a period of one year. While dealing with the aspect of limitation and also filing a composite application claiming arrears of maintenance of five years, the Apex Court in Para No.7 of the judgment observed as under:

“In the present case, the application, namely, Crl.Misc. Petition No.47 of 1993 was filed well within one year. As no amount was paid even after the disposal of the matter by the High Court, the

appellant filed I.A.1 in CrI.Misc.Petition No.47 of 1993 wherein the arrears due up to that date were calculated and sought recovery of that amount under Section 125 (3). Thus, I.A.1 was filed even when CrI.Misc.Petition 47 of 1993 was pending and no action to issue warrant was taken in that proceeding CrI.Miss.Petition No.47 of 1993 which was filed within one year from the date the amount became due was kept alive and it was pending although. The purpose of filing I.A. on 1st September, 1998 was only to mention the amount due upto date. The fact that the additional amount was specified in the I.A. does not mean that the application for execution of the order by issuing a warrant under Section 125 (3) was a fresh application made for the first time. As already noticed, the main petition filed in the year 1993 was pending and kept alive and the filing or subsequent I.A. in 1998 was only to specify the exact amount which accrued due upto that date. Such application is only supplementary or incidental to the petition already filed in 1993 admittedly within the period of limitation. The fact that only a sum of Rs.5,365/- representing the arrears of eight months was mentioned therein does not curtail the scope of CrI.Misc.Petition filed 1993 more so when no action was taken thereon and it remained pending.”

As seen from the judgment of the Apex Court referred to above, initially an application was filed for grant of arrears within a period of one year of the order granting maintenance. The said application was pending till 1998 when an I.A. was filed in the said M.P. mentioning the total arrears till 1998. Under those circumstances the Apex Court held that bar of limitation will not apply and accordingly reversed the finding of the High Court. While reversing order of the High Court the Apex Court held that Section 125 Cr.P.C. is a measure of legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. The Court also held that it is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125 (1) is a continuing liability.

In view of the above, I see no reason to interfere with the orders passed by the trial Court.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE C. PRAVEEN KUMAR

04.02.2015

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