

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No. 705 OF 2013

ORDER :

This Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the order dated 08.10.2012 passed in Crl.R.P.No.60 of 2011 by the Special Judge for Scheduled Castes & Scheduled Tribes(POA) Act-cum-Additional Sessions Judge at Vizianagaram, in a maintenance matter.

2. The quash petitioner is no other than the husband of the 2nd respondent and father of the 3rd respondent - minor. Respondents 2 and 3 filed the maintenance case in M.C.No.41 of 2009 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram, under Section 125 Cr.P.C. The said case was allowed granting maintenance of Rs.1,000/- per month to the 3rd respondent from the date of maintenance application. After passing of the order, for recovery of arrears of maintenance for 21 months in lump sum, in a single application filed by the respondents 2 and 3 in Crl.M.P.No.2273 of 2011, the learned Magistrate, after hearing the petitioner that he is not prepared to pay the arrears amount of Rs.20,000/- due by saying that Rs.1,000/- was already paid, sent him to civil prison by order dated 09.11.2011. It is ordered in para 4 of the order that the petitioner is sentenced to undergo simple imprisonment for a period of 15 days for each default i.e., for 10 months period as he is fallen due the balance of arrears for 20 months.

3. It is impugning the same, the petitioner preferred Crl.R.P.No.60 of 2011 on the file of the Special Judge for Scheduled Castes & Scheduled Tribes (POA) Act-cum-Additional Sessions Judge at Vizianagaram, where the learned Sessions Judge by order dated 08.10.2012 dismissed the application confirming the order of the learned Magistrate (supra).

4. It is impugning the same, the present petition is filed to set aside the orders of both the lower Courts mainly by contending with reference to the expression of the Division Bench of this Court in ***Abdul Gafoor @ Ashan Vs. Smt. Hameema Khatoon*** holding that even the arrears is for 12 months , for one petition, there is only one order of warrant and thereby the maximum one month is the imprisonment and not for each month or part of the month separate for each one month imprisonment.

5. For that, the Division Bench of this Court on a reference answering earlier two expressions of this Court in 1994 CrL.J.565 AP and 1990(1) ALJ 370 AP, overruled those expressions and placed reliance on the expression of the Apex Court in ***Shahada Khatoon Vs. Amjad Ali***.

6. However, by distinguishing very conclusions arrived in ***Shahada Katoon's case*** (2 supra) by the Apex Court, a Division Bench of Maharashtra High Court observed that considering the language of Section 125(3) and also in the form provided under Schedule II Form 18, the Magistrate can impose punishment for default of each month or part of each month's default, imprisonment for one month or till payment is made whichever is sooner to say, if the arrears are more than one month, the imprisonment can exceed more than one month; even it is claimed in one application.

7. By distinguishing the Division Bench expression of this Court in ***Abdul Gafoor's case (1 supra)***, it is also observed in the order of the learned Sessions Judge that subsequently, the Gujarat High Court Full Bench in ***Suo Moto Vs. State of Gujarat***, when the question came for consideration that for the failure to pay the several months maintenance claim, observed that the sentence of defaulting person is upto one month for each month and the prior ruling of the Apex Court in ***Shahada Katoon's case*** (2 supra) saying for one application one month irrespective of more than one month claim is not correct, as there are 29 rulings of several High Courts and of the Apex Court in saying from each month's maintenance liability and for each month's default, there can be imprisonment up to one month for each month.

8. The observation of the Division Bench of this Court in ***Abdul Gafoor's case (1 supra)*** is fortified by another expression of the learned Single Judge of this Court in a subsequent matter in CrL.R.C.No.1119 of 2012. No doubt, there is an expression of the Apex Court in ***Shantha @ Ushadevi and another Vs. B.G. Shivananjappa***. The Apex Court in the judgment dated 06.05.2005 observed that under Section 125(3) Cr.P.C. the application for arrears due to be claimed be filed within one year. Once such application is pending since long time even for the subsequent period, it saves from limitation. It is thus not a direct authority on the aspect as to for each month amount due for non-payment after levying, the imprisonment can be imposed for every month up to one month

where the claim is for more than one month in the same application.

9. Now, it is the interpretation of Section 125(3) Cr.P.C. i.e., the Division Bench of this Court referring to the expression of ***Shahada Katoon's case*** (2 supra) arrived the conclusion that in each application irrespective of number of months claimed the imprisonment maximum is one month and it is left open to the claimants to make claim for each month in a separate application, and in such event, the petitioner is liable to pay for each month and in default to undergo the sentence of maximum of one month for each month application. This Court in the recent past in CrI.R.C.Nos.2188 of 2011 and 959 of 2013 by common order dated 25.11.2014 referred the expression in ***A.Tirumal Raj Vs. A. Anupama*** referring to Section 125(3) Cr.P.C. and the expression of the Apex Court in ***Kuldip Kour Vs. Surinder Singh*** observed that in one application Magistrate has no power to imprison the default respondent beyond one month and sending the husband to jail for execution of maintenance order in each application, up to one month, no way absolve him from liability of recovery for same not a mode of discharge but one of the modes of recovery and order of maintenance need not be from date of order but from date of petition. For more clarity, from the wording of Section 125(3) Cr.P.C., it is relevant to reproduce the same in this regard.

10. The wording of Section 125(3) reads as follows:

"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 month's allowances 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.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground

for his wife' s refusal to live with him.”

11. From the very wording supra, 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 month' s allowances 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. The first proviso speaks, the arrears must be claimed within one year from the date fallen due. If it is beyond one year from date fallen due, it is unrecoverable under Section 125(3) Cr.P.C. It is not the one year maximum period of imprisonment provided from that proviso. The stress from combined reading of the wording of Section 125(3) Cr.P.C. supra is to the order initially. Thus, once it is an order in an application, the levy must be maximum one month, irrespective of for how many months; as had it been not used by the word for every breach of the order and used the word for every breach of the amount, it can be said from the second line saying for the wholly or any part of each month's allowances remaining unpaid after execution of warrant to imprisonment for a term which may extend to one month. Once the maximum one month provide for a wholly or part of each month is controlled by the word in every breach of the order, what the Division Bench interpreted and expressed is squarely within the four corners of the interpretation of the Section by further clarifying that if it is a separate application for each month, the levy can be for non-payment up to one month imprisonment by an order on such application; whereas if it is for several months made in one application, as the order each to be passed by the Magistrate concerned cannot exceed one month by that order on the application and it does not mean for several months claimed, even more than one month imprisonment can be passed. In view of the Division Bench expression that was not brought to the notice of the learned Magistrate in passing the order or even for the revision Court below in confirming the same ignoring the Division Bench expression and following the other High Court expressions is unsustainable. Having regard to the above, the order of 10 months imprisonment is to be modified to one month imprisonment by allowing the application to that extent.

12. Accordingly and in the result, the Criminal Petition is disposed of by modifying the order of the learned Magistrate confirmed in revision by the learned Sessions Judge to the extent of reducing from 10 months imprisonment to one month imprisonment and in other respects, the impugned orders hold good. There is no order as to

costs.

13. Consequently, miscellaneous petitions, if any pending in this Criminal Petition, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

19th November, 2015

Note: LR copy be marked.

(b/o)

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*THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

+CRIMINAL PETITION No.705 of 2013

% 19-11-2015

Lenka Adinarayana .. Petitioner

Vs.

\$ The State of A.P. rep. by its Public

Prosecutor, High Court of Judicature

at Hyderabad, and others

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri G. Rama Gopal

^ Counsel for 1st respondent : The Public Prosecutor

^ Counsel for respondents 2 & 3 : None appeared

^ Counsel for 4th respondent : None appeared

? CASES REFERRED :

1. Crl.L.J. 1280 = 2004(1) LS 63 (DB) (AP)
2. 1999 Crl.L.J. 5060 = 1999 SCC (Crl.) 1029
3. 2009 Crl.L.J. 920
4. (4) SCC 93
5. 2015(3) ALT(Crl.) 275
6. AIR 1989 SCC 232

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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CRIMINAL PETITION No. 705 of 2013

Between:

Lenka Adinarayana

.. Petitioner

and

The State of A.P., rep. by its Public

Prosecutor, High Court of Judicature
at Hyderabad, and others

.. Respondents

JUDGMENT PRONOUNCED ON : 19-11-2015

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THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers :
may be allowed to see the judgments?

2. Whether the copies of judgment may be :
marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to :
see the fair copy of the judgment?