

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision (F) No. 109 of 2014

Date of decision : 12.05.2016

Vishal

..... Petitioner

versus

Munni Devi

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Anshuman Dalal, Advocate
for the petitioner

Mr. Ankit Grewal, Advocate
for the respondent

ANITA CHAUDHRY, J. (ORAL)

This revision petition has been filed by the petitioner against the order dated 09.05.2014 vide which the petitioner had been sentenced to undergo imprisonment for a period of twelve months as he failed to pay the arrears of maintenance.

Interim bail was allowed to the petitioner subject to deposit of Rs. 50,000/-. The petitioner is presently on bail.

Learned counsel for the petitioner states that petitioner is regularly paying Rs. 10,000/- till the arrears are cleared as was stated on 10.07.2015. He further states that thereafter he would be paying the amount that had been allowed by the Family Court. He further states that the order of bail may be made absolute and the impugned order be set aside. He further states that the petitioner could not have been sent to jail for 12 months in one go. The question that would arise is whether the Magistrate could impose a sentence and send the petitioner to custody for more than a month. This question was raised in ***Shahad Khatoon and***

others Vs. Amjad Ali and others 1999(5) SCC 672. The concluding lines of the judgment are as under:-

.....This power of the Magistrate cannot be enlarged and therefore, the only remedy would be after expiry of one month, for breach of non-compliance of the order of the Magistrate the wife can approach again to the Magistrate for similar relief. By no stretch of imagination the Magistrate can be permitted to impose sentence for more than one month. In that view of the matter the High Court was fully justified in passing the impugned order and we see no infirmity in the said order to be interfered with by this Court. The appeal accordingly fails and is dismissed.”

In **Sundaran Vs. Sumathi 2006(3) KLT 725** it had been contended before the Court that irrespective of the number of defaults that are committed in paying each month's maintenance, there is a cap of one month on the total period of imprisonment that can be imposed and therefore, the sentence ordered by the Magistrate for more than one month was illegal. The contention was rejected and it was answered by the Court as follows:-

“8. I have carefully gone through each sentence in the judgment extracted above. It is impossible to deduce the conclusion which the learned counsel for the petitioner wants this court to accept from any sentence of the judgment or the cumulative effect of all the sentences. The Supreme Court has not held so. It would be unreasonable for this court to hold that the Supreme Court has held so because it goes against the policy of law and the specific stipulations in S.125. I have adverted to this contention in detail, though a reading of the statutory provisions in the light of the

decision of the Supreme Court does not leave behind any doubt in my mind, only because it is submitted at the Bar that many Family Courts/Magistrates do choose to follow the interpretation which the petitioner wants to place on the decision in Shahada's case, I need only say that the Supreme Court has not held so. It would be myopic and puerile to hold that the Supreme Court said so. The statutory provisions must lead to the inevitable and unmistakable conclusion that each month's default would be visited with the maximum sentence of one month's imprisonment. The mere fact that the destitute has not chosen to complain every month and has chosen to complain of the breach in respect of plurality of months in one petition within a period of 12 months cannot at all deliver to the defaulter any undeserved advantage. This contention is obviously unacceptable and unsustainable. The Supreme Court was obviously not considering the question whether more than one months imprisonment can be awarded for breach of the direction to pay maintenance committed in respect of more months than one. Though the factual matrix is not adverted to in detail in the judgment extracted above it is evident that the Supreme Court was considering the question whether more than one month's imprisonment can be imposed on the defaulter if the breach to pay maintenance for one month continues for more months than one. If the default to pay maintenance for a particular month continues for any length of time, maximum imprisonment of one month alone can be imposed. That is all what the Supreme Court has held. The Supreme Court was considering the contention by the counsel that in the event of breach, the

defaulter can be detained in custody till the payment is made. That is evident from the judgment (see the portion underlined which refers to the contention). That contention was repelled holding that endless detention until payment was effected cannot be made. There is no reported decision of this court or any other court on the interpretation of Shahada Khatoon except that of the Allahabad High Court. I respectfully disagree with the learned Judge of the Allahabad High Court who understood Shahada Khatoon differently in Dhilip Kumar v. Family Court (2000) Crl.L.J. 3893) without reference to the earlier decisions of that Court in [Emperor v. Beni](#) (AIR 1938 Allahabad 386) (F.B.) and [Ram Bilas v. Bhagwati Devi](#) (1991 Crl.L.J. 1098)."

Doubting the correctness of the above judgment, the matter was referred to a Division Bench and to resolve the conflicting decision of various single Benches, the matter was taken up in **Santosh Vs. State of Karela RPFC No.34 of 2010**, decided on 18.11.2013 and after referring to numerous judgments, the principle laid down in **Sundaran Vs. Sumathi 2006(3) KLT 725** was approved.

So the question relates to the quantum of punishment that can be imposed for recovery of arrears of maintenance. Under S.125(3), the sentence, for the whole or any part of each month's allowance remaining unpaid, after the execution of the warrant, can only be imprisonment for a term which may extend to one month or until payment if sooner made. Does this provision mean that the maximum sentence which the Magistrate can impose is only one month?

The power to sentence is in respect of the whole or any part, of each month's allowance defaulted and therefore for the default in respect of each month, there can be a sentence of imprisonment upto one month. It is

not correct to assume that the power of Magistrate is to impose only a month's imprisonment irrespective of the duration of the arrears of maintenance. A month's imprisonment for every month's default is the maximum penalty under S.125 (3) and not a maximum of a month's imprisonment for the total default.

The court has to exercise its discretion in each case and decide whether the maximum penalty should be imposed or whether a lesser punishment is sufficient. A month's imprisonment for every default is not the rule and sentencing cannot be mechanical. The court has to apply its mind, consider the circumstances of each case and then decide about the quantum of punishment, having due regard to the statutory limit of the maximum punishment of one month for each default.

The Apex Court in **Shahada Khatoon's** case had held that the confinement can extend to only one month and if even after the expiry of one month the delinquent husband does not make the payment of maintenance then the wife can approach the Magistrate again for a similar relief but the confinement of the husband must be only for one month. In one stroke no composite confinement can be directed by the Court and this is the position which clearly flows from the Apex Court judgment.

The petition is allowed. However, liberty is granted to the wife to file fresh application alleging non-compliance of the order, if the payment is not made, the Court concerned would pass an order on the prayer made. The order granting bail to the petitioner is made absolute.

May 12, 2016

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**(ANITA CHAUDHRY)
JUDGE**