

Bail Slip

The Petitioner Viz, R,Rajesh, Male aged 35 years was released on bail as per Order of this Court dated 12.01.2017 made in Crl.RC.57/2017 and Crl.Mp.No.621/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Crl.R.C.No.57 of 2017
& Crl.M.P.No.621 of 2017

R.Rajesh Petitioner

vs.

Kalaiyarasi ... Respondent

Prayer:- Criminal revision case filed under Section 397 read with 401 Cr.P.C., to set aside the order passed in Crl.M.P.No.358 of 2016 in F.C.M.C.No.77 of 2014 dated 20.10.2016, on the file of the Family Court, Vellore, Vellore District.

For Petitioner : Mr.E.Kannadasan
For Respondent : Mr.E.C.Ramesh

ORDER

This criminal revision case is filed against the order passed by the Family Court, Vellore, Vellore District, in Crl.M.P.No.358 of 2016 in F.C.M.C.No.77 of 2014 dated 20.10.2016.

2. The respondent-wife filed Crl.M. P.No.358 of 2016 in F.C.M.C.No.77 of 2014 before the Court below viz., Family Court, Vellore, Vellore District, seeking a direction under Section 125(3) of the Code of Criminal Procedure to direct the husband, the petitioner herein, to pay the maintenance arrears for the period of 20 months amounting to total sum of Rs.4,00,000/- and on his failure, he may be sentenced to imprisonment for a period of 20 months.

3. Considering the said provision, the Family Court, Vellore, Vellore District, has passed the following order.

"Respondent produced non bailable warrant.
Respondents says that "he has no means and

ready to go to jail". Hence remand him to jail under 125(3) for a period of 12 months or until payment if sooner made. Sd/- 20.10.2016."

4. Challenging the said order of sentencing the petitioner to jail for a period of 12 months or until payment if sooner made, the petitioner has preferred this criminal revision case.

5. I have heard Mr.E.Kannadasan, learned counsel appearing for the petitioner and Mr.E.C.Ramesh, learned counsel appearing for the respondent.

6. The learned counsel appearing for the petitioner would submit that the petitioner does not have the means to pay the maintenance arrears to the respondent as directed by the Court below. Therefore, a non bailable warrant was issued against him and was produced before the Court below. The learned Family Court Judge, interpreting Section 125(3) of the Code of Criminal Procedure, has passed the present impugned order, sending the petitioner to jail for 12 months.

7. In this regard, the learned counsel appearing for the petitioner would submit that Sub Section 3 of Section 125 of the Code of Criminal Procedure does not provide for any longer incarceration for non compliance of the order passed under the said section beyond one month period. In this regard, the learned counsel refers to Section 125(3) of the Code of Criminal Procedure, which reads thus.

"(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 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."

8. By relying upon the said provision, the learned counsel would contend that at the most, if the person against whom an order was passed to pay maintenance to his wife, has not paid the same, of course, by having the means, he can be sent to jail for a maximum period of one month at a stretch or if he has come forward to pay the said amount before the one month period, the person can be released from such incarceration even before the one month period.

9. In support of the said contention, the learned counsel appearing for the petitioner has heavily relied upon the

decision of the Honourable Supreme Court in SHAHADA KHATOON AND OTHERS VS. AMJAD ALI AND OTHERS (1999 Supreme Court Cases (Cri) 1029). As the said judgment, being a shorter one, for the better appreciation of the issues, is reproduced hereunder:-

"The short question that arises for consideration is whether the learned single Judge of the Patna High Court correctly interpreted Sub-section (3) of Section 125 of the Cr.P.C. by directing that the Magistrate can only sentence for a period of one month or until payment, if sooner made. The learned Counsel for the appellants contends that the liability of the husband arising out of an order passed under Section 125 to make payment of maintenance is a continuing one and on account of non-payment there has been a breach of the order and therefore the Magistrate would be entitled to impose sentence on such a person continuing him in custody until payment is made. We are unable to accept this contention of the learned Counsel for the appellants. The language of Sub-section (3) of Section 125 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. 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."

10. By citing the said judgment and the said provision of the Code, the learned counsel appearing for the petitioner submits that, since by the impugned order, the learned Judge has sent the petitioner to jail for 12 months, the said order is totally unjustifiable and unsustainable and hence, the same is liable to be interfered with by this Court.

11. Per contra, the learned counsel appearing for the respondent has relied upon the judgment of the Honourable Apex Court in the matter of SMT.KULDIP KAUR V. SURINDER SINGH AND ANOTHER dated 03.11.1988 (1989 AIR 232), wherein it has

been held as follows.

"A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. Sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so. Commence does not support such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon

the monthly allowance being recovered. The liability cannot be taken to have been by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible. That is the reason PG NO 768 why we set aside the order under appeal and passed an order.

12. The learned Counsel would rely upon the operative portion of the said order, in which, the following direction is given by the Honourable Supreme Court.

"So far as the amount of monthly allowance awarded in this particular case is concerned, by consent of parties, we pass the following order in regard to future payments with effect from 15th August, 1986.

We direct that Respondent No 1, Surinder Singh shall pay Rs.275 (Rs.200 for the wife and Rs 75 for the child) as and by way of maintenance to the appellant Smt Kuldip Kaur commencing from August 15, 1986. The amount of Rs 275 shall be paid by the 15th of every succeeding month. On failure to pay any monthly allowance for any month hereafter on the part of respondent No 1, Surinder Singh, the learned Metropolitan Magistrate shall issue a warrant for his arrest, cause him to be arrested and put in jail for his failure to comply with this Court's order and he shall not be released till he makes the payment."

13. The learned counsel would further rely upon yet another judgment of the Honourable Supreme Court in POONGODI AND ANOTHER V. THANGAVEL ((2013) 10 Supreme Court Cases 618), wherein it has been held as follows.

"7. The ratio of the decisions in the aforesaid cases squarely apply to the present case. The application dated 05.02.2002 filed by the appellants under Section 125(3) was in continuation of the earlier applications and for subsequent periods of default on the part of the Respondent. The first proviso to Section 125 (3), therefore did not extinguish or limit the entitlement of the appellants to the

maintenance granted by the learned trial court, as has been held by the High Court.

8. In view of the above, we are left in no doubt that the order passed by the High Court needs to be interfered with by us which we accordingly do. The order dated 21.04.2004 of the High Court is set aside and we now issue directions to the respondent to pay the entire arrears of maintenance due to the appellants commencing from the date of filing of the Maintenance Petition (M.C.No.1/1993) i.e. 4.2.1993 within a period of six months and current maintenance commencing from the month of September, 2013 payable on or before 7th of October, 2013 and thereafter continue to pay the monthly maintenance on or before the 7th of each successive month. If the above order of this Court is not complied with by the Respondent, the learned Trial Court is directed to issue a warrant for the arrest of the respondent and ensure that the same is executed and the respondent taken into custody to suffer imprisonment as provided by Section 125(3) CrPC.

9. The appeal is allowed."

14. By relying upon these judgments, the learned counsel appearing for the respondent contended that, sending the person into jail, for his failure to pay the maintenance awarded by the Court concerned, is the only mode available for the Court to make the person to pay the maintenance to his spouse. That is the reason why the Courts are interpreting that this mode/method can be adoptable or admissible till such payment is made towards maintenance as directed by the Court concerned. Therefore, the learned counsel would submit that it cannot be contended that a person, who has been sent to jail for a month, as per the language used in Section 125(3) of the Code of Criminal Procedure, after he comes out by undergoing the said one month incarceration, he would be set at free and his liability to pay maintenance becomes obsolete. Therefore, the learned counsel would submit that inspite of the non bailable warrant having been issued against the petitioner, since he had not come forward to comply with the orders of the Court below to pay maintenance to the respondent, the lower Court did not have any other option except to invoke Sub Section 3 of Section 125 of the Code of Criminal Procedure and accordingly, an order was passed by the lower Court sending the petitioner to jail for 12 months for non payment of maintenance, which, as per the earlier

order of the Court below is Rs.4,00,000/- by way of arrears.

15. I have considered the said rival submissions made by both sides and also perused the records placed before this Court as well as the decisions cited on either side.

16. If we look into the language used in Sub Section 3 of Section 125 of the Code of Criminal Procedure, the words "imprisonment for a term which may extend to one month or until payment if sooner made" can be interpreted only by reading the plain language used in the section itself.

17. The reason being that, the law of interpretation is well settled, and when a legislature has used a plain and unambiguous language, the Courts need not give on its own different interpretation than the one, which could be normally interpreted on seeing plain language used in the legislation itself.

18. Here in this case, since the Sub Section 3 of Section 125 of the Code of Criminal Procedure used the words "may extend to one month" that means the maximum sentence at once shall be a month, or because of the language, "until payment is sooner made", even that one month period can be reduced, provided if the payment is made even before the one month period. Therefore, the scope for sending the person, who has not made payment of maintenance under Section 125 (3) of the Code of Criminal Procedure, to jail is only for one month at the most in one stretch.

19. This is what exactly held by the Honourable Supreme Court in the said judgments cited supra.

20. The very same view has also been taken by this Court in yet another judgment in MEHBOOB BASHA V. NANNIMA @ HAJARA BIBI AND ANOTHER ((2005) 1 Law Weekly (CrI.) 384). The learned Judge, in the said judgment cited supra, after having considered the Apex Court judgment cited supra in SHAHADA KHATOON AND OTHERS VS. AMJAD ALI AND OTHERS (1999 Supreme Court Cases (Cri) 1029)= ((1999) 5 Supreme Court Cases 672), has held as follows:

"3. Under sub-section (3) of section 125 Cr.P.C. it has been made clear that the power of the Magistrate imposing imprisonment on the failure of the husband to pay maintenance has been restricted to only one month or until payment if sooner made. After the one month, for every breach or non-compliance of the order of the Magistrate, wife can approach the Magistrate once again for similar relief. Therefore, the orders of the

learned Chief Judicial Magistrate made in Crl.M.P. Nos. 794, 795 and 796 of 2003 are set aside since the petitioner has already been in jail for more than 3 1/2 months. These revisions are allowed. The petitioner shall be released. But the Chief Judicial Magistrate is at liberty to pass fresh orders once the wife approaches the Court for non-compliance of the maintenance order, but not more than a month on each occasion. The learned Magistrate will also take into consideration the question of limitation with regard to the arrears of maintenance as contemplated in section 125(3) Cr.P.C. and also the decision in Rajendran v. Minor Revathi, rep. by mother Maheswari (1997(1) Crimes 486) and Poorani v. Ramanathan {(2003) M.L.J. (Crl.) 223}. Consequently, Crl. M.P. Nos. 1109, 1110 and 1111 of 2004 are closed."

21. Even in respect of the judgment cited by the learned counsel for the respondent, i.e., SMT.KULDIP KAUR V. SURINDER SINGH AND ANOTHER dated 03.11.1988 (1989 AIR 232) cited supra, the operative portion of the order was passed by the Supreme Court on consent. In respect of other judgment cited by the learned counsel for the respondent, that is, POONGODI AND ANOTHER V. THANGAVEL ((2013) 10 Supreme Court Cases 618) is concerned, there also, a direction was given to pay the arrears within a particular period and to pay the future maintenance continuously and it was further directed that in case of failure in making the payment, it was upto the trial Court to invoke Section 125(3) of the Code of Criminal Procedure by taking custody of the respondent to suffer imprisonment.

22. So, from the said judgments, the principle emerges is that whenever there is a failure of complying the order for payment of maintenance, then the person would be liable to be sent to jail for a period of one month. However, this restriction of one month under sub-section 3 of Section 125 of the Code of Criminal Procedure cannot stand in the way even after one month period, if he continues to neglect the payment of arrears, once again the very same provision of 125(3) of the Code of Criminal Procedure can be invoked by the Court concerned, provided if the law is set in motion by filing an appropriate petition by the wife or the affected party. However, the Court cannot send a person to jail beyond the period of one month at a stretch or in one stroke for his failure to pay the maintenance of arrears.

23. If this principle, as has been culled out from the said judgments cited above, is applied to the present case, this

Court is of the considered view that the order impugned passed by the Court below sending the petitioner to jail for 12 months for his failure of making payment of maintenance to the respondent, is certainly beyond the scope of Section 125(3) of the Code of Criminal Procedure and therefore, for the said reason, I am inclined to set aside the said order and accordingly, the impugned order stands set aside.

24. It is informed across the bar that pursuant to the order impugned, the petitioner has already undergone imprisonment for more than one month period and has come out. The only apprehension for the petitioner as of now is that, since the sentence was 12 months period, once again the petitioner can be brought under custody and sent to jail to complete the sentence of 12 months as ordered by the Court below in the impugned order.

25. In view of the discussion made and orders passed above, the said apprehension the petitioner need not have as the maximum sentence pursuant to the impugned order can be only one month and since the same has already been undergone by the petitioner, he can be set at free for the present. The reason being, if the petitioner continues to neglect to pay the arrears of maintenance, despite orders to be passed in this regard and he is also having the enough means to pay the same, the law can very well be set in motion by the respondent before the Court concerned and in that case, it is open to the Court below to act in accordance with law as per the principle, as has been indicated above.

26. With these observations and directions the Criminal Revision Case is allowed to the extent indicated above. No costs. Consequently, connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Judge,
Family Court, Vellore,
Vellore District.

2.The Judicial Magistrate No.1,
Vellore, Vellore Distict.

3.The Chief Judicial Magistrate,
Vellore.

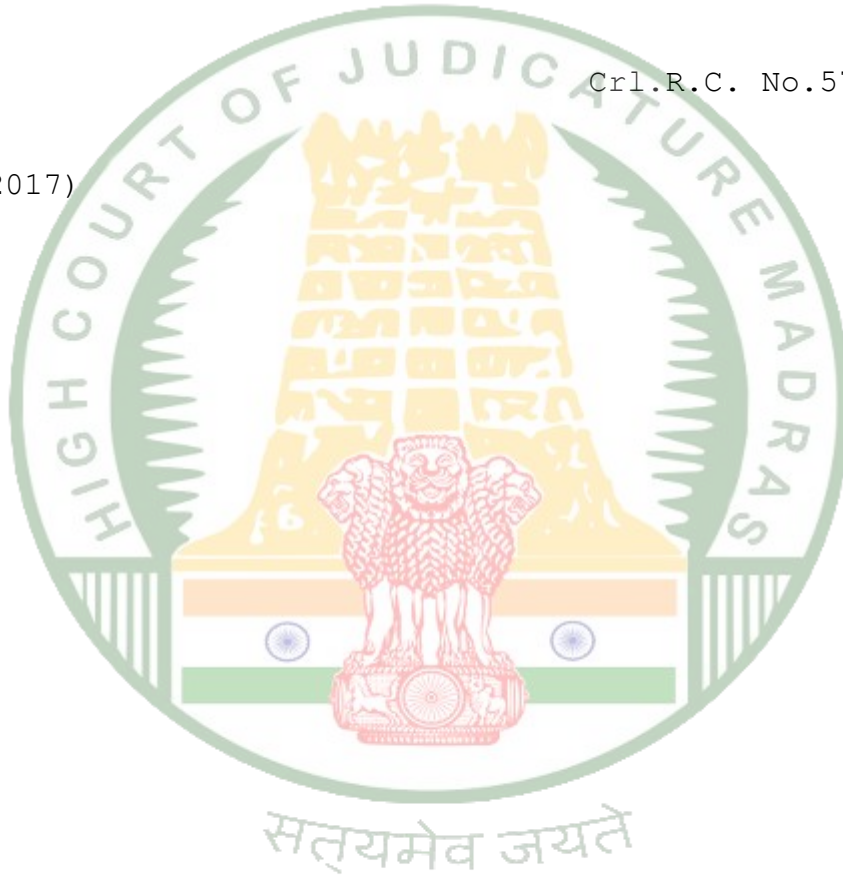
4.The Superintendent,
Central Prison, Vellore.

+lcc to Mr.E.Kannadasan, Advocate SR.No.48468

+lcc to MR.E.C.Ramesh, Advocate SR.No.48932

Cr1.R.C. No.57 of 2017

MP (CO)
GN (09/08/2017)



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