

CRM-M-37967 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

CRM-M-37967 of 2016

Date of Decision:10.5.2017

Sher Singh

---Petitioner

vs.

State of Haryana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. J.S.Thind, Advocate
for the petitioner

Mr. Pawan Garg, AAG, Haryana

None for respondent No. 2

Rekha Mittal, J.

The present petition directs challenge against order dated 19.1.2016 passed by the District Judge, Family Court, Hisar whereby the petitioner has been sentenced to imprisonment for a period of twelve months on account of his failure to pay arrears of maintenance to the tune of Rs. 1,19,000/- at the rate of Rs. 3,500/- per month.

Counsel for the petitioner has submitted that the petitioner had already suffered custody for a period of more than ten months by the time he was ordered to be released on bail vide order dated 11.11.2016 passed by this Court. It is further submitted that order passed by the Court below directing imprisonment for a period of twelve months is in clear violation

of the provisions of Section 125(3) of the Code of Criminal Procedure (in short “the Code”), therefore, the order impugned cannot be allowed to sustain and liable to be set aside. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India *Shahad Khatoon and others vs. Amjad Ali and others 1999 (3) Civil Court Cases 522*. Further reference has been made to judgment of this Court *Sunit Kumar vs. Rita and others 2013(3) RCR (Criminal) 51*. Counsel has also relied upon Division Bench judgment of Andhra Pradesh High Court *Abdul Gafaoor @ Ashan vs. Smt. Hameema Khatoon and others 2004(3) RCR (Criminal) 779* and judgment of Madras High Court *Mahboob Basha vs. Nannima @ Hajara Bibi and another 2005(3) AICLR 518*.

There is no representation on behalf of respondent No. 2 despite service.

I have heard counsel for the petitioner, perused the paper book and the judgments cited at Bar.

A relevant extract from the impugned order reads as follows:-

“The respondent has, however, made a separate statement today to the effect that he is not in a position to pay the maintenance allowance to the petitioners. This Court is, therefore, of the view that the respondent has wilfully disregarded the order of the court regarding payment of the maintenance without any sufficient cause by not paying any amount towards the arrears of maintenance of Rs. 1,19,000/- at the rate of Rs. 3500/- per month. Therefore, the respondent is sentenced to undergo

imprisonment for a period of twelve months from today on account of his failure to pay the arrears of maintenance of Rs. 1,19,000/-. However, it is made clear that in case the respondent clears the said amount he shall be released forthwith.”

Section 125 (3) of the Code 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 allowance 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.”

A perusal of Section 125(3) would make it evident that if a person fails to pay maintenance, he may be sentenced, for the whole or any part of each month's allowance remaining unpaid, to imprisonment for a term which may extend to one month or until payment. There is no provision in law that if a person has failed to pay arrears of maintenance, he can be sentenced to imprisonment for a period of more than one month as a one time measure irrespective of the amount outstanding or the number of months for which he/she has not paid maintenance.

Hon'ble the Supreme Court of India in *Shahad Khatoon and other' case (supra)* has held that language of sub-section (3) of Section 125

of the Code is quite clear and circumscribes 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 or non-compliance of 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 view of enunciation of law laid down in *Shahad Khatoon and others's case (supra)* followed in the judgments passed by the various High Courts, I find merit in contention of counsel for the petitioner that the order impugned imposing imprisonment for a period of 12 months for failure to pay arrears of maintenance amounting to Rs. 1,19,000/- cannot be allowed to sustain and liable to be set aside. As the petitioner has already suffered imprisonment for a period of more than one month and released from custody by the court, no further directions in the matter are required to be issued.

Disposed of accordingly.

(Rekha Mittal)
Judge

10.5.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No