

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.R.C. No.1396 of 2011
and M.P.No.1 of 2011

Chinnasamy

... Petitioner

Vs

Valliammal

..Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C, praying to call for the records of the learned District Munsif cum Judicial Magistrate, Perundurai made in C.M.P.No.5718 of 2010 in M.C.No.27 of 2005 dated 19.09.2011 and set aside the same.

For Petitioner : Mr.Gowrishankar
for Mr.G.Jeremiah

For Respondent : No Appearance

O R D E R

This criminal revision has been filed by the petitioner praying to set aside the order dated 19.09.2011 passed by the learned District Munsif cum Judicial Magistrate, Perundurai, in C.M.P.No.5718 of 2010 in M.C.No.27 of 2005.

2. The respondent in Crl.M.P.No.5718 of 2010 in M.C.No.27 of 2005 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai, is the petitioner herein.

3. According to the learned counsel appearing for the petitioner, the petitioner and the respondent are the husband and wife. The respondent has filed the petition under Section 125 Cr.P.C. for getting maintenance from her husband which had taken on file in M.C.No.27 of 2005 . The learned District Munsif cum Judicial Magistrate, Perundurai on 05.12.2005 has passed an order in which he directed the petitioner/husband to pay a sum of Rs.4,000/- per month towards maintenance. Since the petitioner has not paid any maintenance as per the said order,

the respondent had filed the petition in Crl.M.P.No.5718 of 2017 in which she prayed to collect the maintenance from 05.12.2005 to 05.12.2010 i.e. 60 months. Since the petitioner has not paid the maintenance, the Trial Court has allowed the said petition and convicted the petitioner for a period of one year Rigorous Imprisonment for non payment of maintenance for a period from 06.12.2009 to 05.12.2010 (Totally 12 months). Aggrieved by the said order, the petitioner has filed the present criminal revision case before this Court.

4. Before going into the merits and demerits of the case, it is pertinent to refer the provision under Section 125 (3) of the Criminal Procedure Code, which is extracted as follows:

125(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 (allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be) remaining unpaid after the execution of the warrant, to imprisonment for a term which may extended to one month or until payment if sooner made.

As per the said provision, the Magistrate is empowered to pass an order for convicting the petitioner for a period of one month Imprisonment for each monthly default. But contrary to the said provision, the learned Magistrate awarded one year imprisonment. Now, on a perusal of the Judgment of our Hon'ble Apex Court reported in (1999)5 SCC 672 - Shahada Khatoon and Others vs. Amjad Ali and Others, wherein it has been held as follows:

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 or non-compliance with the order of the Magistrate the wife can approach the Magistrate again for similar relief. By no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month.

In the said circumstances, now analysing the facts with the case in our hand, the above said decision is squarely applicable to

the present petition. Accordingly, the order passed by the learned Magistrate is erroneous and warrants interference of this Court. Hence, the impugned order passed by the trial court is liable to be set aside.

5. Hence, in the light of the above principles, the impugned order passed in C.M.P.No.5718 of 2010 in M.C.No.27 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai dated 19.09.2011 is hereby set aside.

6. In view of the above, this criminal revision is allowed. Consequently, connected miscellaneous petition is closed. However, the respondent/wife is at liberty to file another application for payment of arrears of maintenance for the default period as stipulated in Cr.P.C.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The District Munsif cum Judicial Magistrate,
Perundurai.
2. The Chief Judicial Magistrate,
Erode.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.G.Jeremiah, Advocate, S.R.No.28913

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GMR(CO)
CS/07/06/18

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