

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.2203 OF 2011

ORDER:

No representation on behalf of the petitioner.

The present Criminal Revision Case is filed challenging the orders passed in M.P.No.1475 of 2009 in M.C.No.323 of 2007, dated 14.10.2011 on the file of the Court of Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad whereby the petitioner was committed to prison to serve the sentence of imprisonment of 12 months as fixed in the warrant, in default of payment of arrears of maintenance amount.

The facts, in brief, are that the respondents 1 and 2 herein filed M.C.No.323 of 2007 against the petitioner herein claiming maintenance on the file of the Court of Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad. In the said M.C., the respondents 1 and 2 have been awarded maintenance. Since the petitioner has not paid the maintenance amount including the arrears, the respondents 1 and 2 constrained to file M.P.No.1475 of 2009 under Section 125(3) of Cr.P.C. to send the petitioner to civil imprisonment. It appears, the arrears of maintenance claimed in the above said M.P. pertains to 47 months. The Court below by orders dated, 14.10.2011 committed the petitioner to civil imprisonment for 12 months. Aggrieved by the same, the present Criminal Revision Case is filed.

The issue that arises for consideration in the present Criminal Revision Case is:-

“Whether the petitioner is liable to undergo imprisonment for 12 months as directed by the Court below?”

Section 125 of Cr.P.C. contemplates order of maintenance to wife, children and parents. Sub-Section(3) of Section 125 of Cr.P.C. contemplates that if any person so directed to pay maintenance, fails to pay the same, without any sufficient cause, is liable to undergo imprisonment for a term which may extend to one month or until payment is made. The proviso to the said provision would also stipulates that no warrant shall be issued for recovery of any amount due under this Section unless an application be made to the Court to levy such amount within a period of one year on which date it became due. In the case on hand, the grounds raised in the Criminal Revision Case would indicate that arrears of maintenance claimed in the present M.P. pertains to 47 months. As per the above said provision, the respondents 1 and 2 herein are entitled to claim maintenance for a period of 12 months i.e. within a year, but not for 47 months. That apart, the imprisonment as contemplated for default of payment of arrears under Sub-Section (3) of Section 125 of Cr.P.C. is only one month. However, from the impugned proceedings, it is evident that the petitioner is committed to civil prison for 12 months, which is quite contrary to the procedure contemplated under Section 125 (3) of Cr.P.C. As such the impugned order is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed in part modifying the impugned order and reducing the imprisonment imposed on the petitioner to one month instead of 12 months as ordered.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHAVA RAO,J

11th OCTOBER 2018.

Tsr

