

* THE HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

+CRIMINAL REVISION CASE No. 677 of 2018

%13.03.2018

#Gobbatina Venkateswara Rao

..... Petitioner/petitioner

Vs.

\$ State of A.P. represented by its Public Prosecutor, High Court at Hyderabad
and one another

..... Respondents/petitioner

!Counsel for the Petitioner: Smt Kalla Tulasi Durgamba

Counsel for the Respondents: Public Prosecutor (AP)

< Gist :

> Head Note:

? Cases referred:

1. 2003 (2) ALD (CrI.) 902 (AP)
2. 2016 (1) ALD (CrI.) 965 (AP)

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**CRIMINAL REVISION CASE No. 677 of 2018****ORDER:**

This Criminal Revision Case is filed by the petitioner/respondent aggrieved by the order dated 9.2.2018 in CrI.M.P.No. 1078 of 2017 in M.C.No. 44 of 2014 passed by the learned Judicial Magistrate of First Class, Avanigadda, committing the petitioner to civil prison for a total period of 4 months 24 days for his failure to pay arrears of maintenance to respondent/petitioner, who is his wife, for the period covering 26.10.2016 to 20.3.2017 i.e. 30 days of imprisonment for each month's default. Pursuant to the said order, it is informed that the petitioner/respondent is lodged now in Sub Jail, Vijayawada.

2. Since the petitioner is in jail, this Court heard learned counsel for petitioner and passed the order without the necessity of ordering notice to respondent.

3. Referring to Section 125(3) Cr.P.C, learned counsel would submit that as per the said provision, for every breach of the order, the respondent in that proceedings may be sentenced to imprisonment for a term which may extend to one month or until payment if sooner made

and since in the present instances, the respondent/petitioner filed the execution petition in respect of arrears of maintenance from 18.11.2014 to 18.2.2017 amounting to Rs. 54,000/- at once, the total default shall be taken as whole and imprisonment can be ordered only for one month but not exceeding the same by taking each month's default. Instead the lower Court has ordered sentence of 30 days for each month's default which is not authorized by law and hence the order of the lower Court is *per se* illegal. Learned counsel placed reliance on the judgments of this Court reported in **Abdul Gafaoor @ Ashan v. Hameema Khatoon and others¹** and **Lenka Adinarayana v. The State of A.P. and others²**.

4. The point for determination is whether the order of the learned Magistrate directing the petitioner/respondent to suffer imprisonment for 4 months 24 days (i.e., 26.10.2016 to 20.3.2017) in default of payment of arrears of maintenance of Rs. 54,000/- is legally sustainable?

5. Section 125 (3) Cr.P.C is the provision which prescribes the procedure to be followed in case of the default committed by the respondent in paying the maintenance, 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

¹ 2003 (2) ALD (CrI.) 902 (AP)

² 2016 (1) ALD (CrI.) 965 (AP)

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: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such

Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

6. A careful study of the above provision would show that for every breach of the order, the Court can 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 for the maintenance or the interim maintenance and expenses of proceedings, as the case may be, 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. So the maximum punishment for every breach of the order that can be passed is up to one month.

7. In the instant case, the respondent/petitioner filed an execution petition for recovery of arrears of maintenance of Rs. 54,000/- from 18.11.2014 to 18.2.2017.

8. In that view of the matter, for the default of the said amount, he can be imprisoned in civil prison for a period of one month. In **Abdul Gafaoor @ Ashan v. Hameema Khatoon and others** (supra-1) the

Division Bench of this Court in similar circumstances, when the petitioner therein filed a petition for recovery of arrears of 12 months of maintenance, held that under Section 125(3) of the Code, there can only be one imprisonment and the maximum imprisonment would be one month. The Division Bench further held that in case the petitioner chooses to file an application under Section 125(3) of the Code, on every successive month's failure to get maintenance, she may get successive orders of imprisonment if the person against whom the warrant is issued fails to make the payment. But if the person chooses to make an application after several months, then again she will be able to get an order of imprisonment on failure to make the payment which will be only a maximum imprisonment of one month. The Division Bench passed the above order basing on the judgment in *Sahada Khatoon v. Amjad Ali* (1999 SCC (Cr1) 1029). The learned Single Judge of this Court in **Lenka Adinarayana v. The State of A.P. and others** (supra-2) referred to above, expressed similar view.

9. In view of the above precedential jurisprudence on the issue, the order of the Magistrate directing the civil imprisonment of the petitioner/respondent for the period exceeding one month is illegal and untenable. Therefore, the Criminal Revision Case is allowed by

modifying the order of the learned Magistrate to the extent of reducing the imprisonment from 4 months 24 days to 30 days from the date of his detention.

U.DURGA PRASAD RAO, J

Date: 13.03.2018
KA

