

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION NO.4628 OF 2018**

**ORDER:**

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the docket order dated 17.03.2018 passed in CrI.M.P.No.626 of 2017 in M.C.No.28 of 2009 on the file of Additional Munsif Magistrate, Tenali.

The respondent filed a petition under Section 125 (3) of Cr.P).C. to direct the petitioner to pay maintenance for the period from 29.05.2016 to 28.01.2017 i.e. 8 months at the rate of Rs.2,000/- per month, which comes to Rs.16,000/-. In the event of failure to pay maintenance, take necessary steps to send the petitioner to jail.

The Court initially passed an order dated 22.09.2017 committing the petitioner to jail for non-payment of maintenance for the period from 29.05.2016 to 28.06.2016, again committed him to jail for nonpayment of maintenance for the period from 29.06.206 to 28.07.2016, again for the period from 29.07.2016 to 28.08.2016, and finally for the period from 29.08.2016 to 28.09.2016.

Aggrieved by the order, the present petition is filed on the ground that for each default, separate petition is required and passed the order extending the sentence for different periods is illegal and prayed to set aside the order dated 17.03.2018.

CrI.M.P.No.626 of 2017 is filed to enforce the order passed in M.C.No.28 of 2009 for non-payment of maintenance from 29.05.2016 to 28.01.2017 at the rate of Rs.2,000/- per month, which comes to Rs.16,000/- and in the event of failure to pay arrears of maintenance for the above period, commit the petitioner herein to prison.

Accordingly, the Magistrate passed an order on 22.09.2017 and

passed subsequent orders for non-payment of maintenance for the subsequent periods; one such order dated 17.03.2018 committing the petitioner to jail for non-payment of maintenance from 29.08.2016 to 28.09.2016.

During hearing, learned counsel for the petitioner contended that for each default, separate application has to be filed, thereby passing orders for subsequent period and sentencing the petitioner to undergo imprisonment for different spells of default is erroneous and prayed to set aside the same.

Undisputedly, the petition is filed under Section 125 (3) of Cr.P.C. According to proviso to sub-section (3) of Section 125 of Cr.P.C. 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. Thus, it means only on application, the Court has to pass orders for such period.

In a reference made to Division Bench of this Court in “**Abdul Gafaoor @ Ashan v. Hameema Khatoon**<sup>1</sup>”, the Division Bench relied on the judgment of Apex Court rendered in “Shahada Khatoon v. Amjab Ali (1999 SCC (Crl.) 1029)” and held that if a person chooses to make an application after several months, then again a petition has to be filed to get an order of imprisonment on failure to make the payment which will be only a maximum imprisonment of one month.

Therefore, in view of the law laid down by the Division Bench of this Court (referred supra), the docket order dated 17.03.2018 passed by the Additional Munsif Magistrate, Tenali is illegal and liable to be set aside.

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<sup>1</sup> 2003 (2) ALD (Crl.) 902 (AP)

In the result, the criminal petition is allowed. The docket order dated 17.03.2018 passed in Crl.M.P.No.626 of 2017 in M.C.No.28 of 2009 by the Additional Munsif Magistrate, Tenali is set aside. The petitioner herein shall be set at liberty henceforth. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

11.06.2018

Note: Issue C.C. by 12.06.2018.

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