

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6260 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the order dated 19-04-2018 in Criminal Revision Petition No. 38 of 2018 on the file of the Court of IV Additional Sessions Judge, Guntur (for short, 'the Court below').

2. The petitioner is husband of respondent No. 1 and father of respondent Nos. 2 and 3. Respondent Nos. 1 to 3 filed M.C.No. 19 of 2016 on the file of the Court of V Additional Junior Civil Judge, Guntur (for short, 'the trial Court') claiming maintenance. The trial Court by order dated 24-07-2017 awarded maintenance of Rs.2,000/- per month to each of respondent Nos. 1 to 3. When the petitioner failed to pay the maintenance as awarded by the trial Court, respondent Nos. 1 to 3 filed Criminal M.P.No. 3419 of 2017 under Section 125 (3) of Cr.P.C. for realization of the maintenance amount. The trial Court by order dated 01-03-2018 committed the petitioner to prison for a period of eight months. Aggrieved thereby, the petitioner preferred revision before the Court below. The Court below by the impugned order confirmed the order passed by the trial Court. Feeling aggrieved, the petitioner filed the present petition.

3. At the hearing, learned counsel for the petitioner has contended that the maximum imprisonment for nonpayment of maintenance for twelve months is one month and therefore committing the petitioner to prison for eight months is illegal and placed reliance on ***Shahada Khatoon and others Vs. Amjad Ali and others***¹ in support of his contention.

¹ (1999) 5 SCC 672

4. This Court initially ordered notice to respondent Nos. 1 to 3. Despite service of notice, respondent Nos. 1 to 3 did not appear before this Court. As seen from the material on record, the petitioner has been in jail from 01-03-2018 *i.e.* almost for four months for the default committed by him for a period of eight months. The Court below affirmed the order passed by the trial Court based on the principle laid down in ***P.Brahmaiah Vs. P.Padma***², wherein it was held that imprisonment for default of payment shall not be imposed more than 12 months and the petition to be filed within one year from the date of order. The Court below and the trial Court did not understand the purport of the principle laid down in the above judgment and committed a grave error. The imprisonment for twelve months default must not be more than one month. Here in this case, the petitioner allegedly committed default in payment of maintenance for eight months amounting to Rs.48,000/- and in such case, the imprisonment shall not exceed one month. The Apex Court in ***Shahada Khatoon*** (1st *supra*) held that 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 and the 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 and that by no stretch of imagination, can the Magistrate be permitted to impose sentence for more than one month. From the language of sub-section (3) of Section 125 of Cr.P.C., the Magistrate cannot impose imprisonment for more than one month but the Court below and the trial Court committed a serious error in imposing imprisonment of eight months which is contrary to Section 125 (3) of Cr.P.C. and

² 1990 (1) ALT 370

the law declared by the Apex Court in ***Shahada Khatoon*** (1st *supra*). Hence, the order passed by the Court below confirming the order of the trial Court is liable to be set aside and is accordingly set aside.

5. The criminal petition is allowed and the petitioner shall be set at liberty henceforth. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 19-07-2018.

M.SATYANARAYANA MURTHY, J.

Note:

Issue C.C. by tomorrow.

B/O

JSK

