

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7766 of 2018

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed questioning the Order Dt.25.06.2018 in CrI.M.P.No.1028 of 2017 in M.C.No.289 of 2016 passed by the Additional Metropolitan Sessions Judge For the Trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad, whereby the petitioner was directed to undergo simple imprisonment for a period of 15 months or till the payment of arrears of maintenance.

The respondents herein obtained an interim order under Section 125(1) Cr.P.C. for grant of interim maintenance and that the Court below ordered payment of maintenance at Rs.5,000/- to Respondent No.1 and Rs.3,000/- to Respondent No.2, every succeeding month till the disposal of the main petition. But, as the petitioner herein failed to pay the maintenance, the respondents filed a petition under Section 125(3) Cr.P.C. for enforcement of the Order under Section 125(1) Cr.P.C., complaining that the petitioner failed to pay the maintenance for a period of 15 months i.e., from 18.07.2016 to 17.09.2017 and the total arrear amount comes to Rs.1,20,000/- and it is wilful. Upon hearing both the counsel, the Court below imposed sentence for a period of 15 months or till payment of arrears of maintenance.

Aggrieved by the Order, the petitioner/Accused filed the present petition on the ground that the petitioner cannot be compelled to undergo imprisonment for a period of 15 months for

non payment of maintenance and for 12 months, only one month imprisonment was prescribed under Section 125(3) Cr.P.C. and the petitioner placed reliance on a judgment reported in *Rajesh v State* (S.B.Criminal Revision Petition No.1219 of 2017 and batch), wherein the Court discussed the scope of Section 125(3) Cr.P.C. based on the principle laid by the Apex Court in *Sahada Khatoon and others v Amjad Ali and others*¹ and held that the imprisonment for payment of maintenance shall not extend more than one month for default of 12 months or until the payment, if sooner made.

In view of the law declared by the Rajasthan High Court and the Hon'ble Apex Court, the imprisonment of sentence for a period of 15 months is contrary to law and the same is liable to be set aside by allowing the present petition.

Accordingly, this Criminal Petition is allowed setting aside the Order dt. 25.06.2018 in CrI.M.P.No.1028 of 2017 in MC No.289 of 2016 passed by the Additional Metropolitan Sessions Judge For the Trial of JHC BBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 14-08-2018
Note : Issue C.C. by 14.08.2018
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¹ 1999 CrI.L.J.5060



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