

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.2066 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the 2nd respondent State. Though notice is served on the 1st respondent vide USR.No.57707 of 2018 dated 08.08.2018, there is no representation on her behalf.

The present revision case is filed questioning the docket order passed in CrI.M.P.No.198 of 2018 in M.C.No.409 of 2015 dated 16.07.2018 on the file of the Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX AMSJ, Hyderabad, sentencing the petitioner to suffer simple imprisonment for a period of 24 months or till he pays the arrears whichever occur early.

Learned counsel appearing for the petitioner would contend that the impugned order is liable to be set aside since it is contrary to the provisions of law. He also submitted that the imprisonment was ordered without considering the incapability of the petitioner. In fact, the Apex Court in **Shahada Khatoon and others vs. Amjad Ali and others**¹ has laid down that as per Section 125 (3) Cr.P.C., imprisonment over and above one month is not permissible.

¹ (1999) 5 SCC 672

Therefore, he requested to set aside the impugned proceedings.

Per contra, the learned Public Prosecutor appearing for the 2nd respondent State would fairly conceded that as far as imprisonment under Section 125 (3) Cr.P.C., is concerned, it cannot be more than one month. However, in the case on hand, the sentence awarded is 24 months, which is contrary to the provisions of law.

Having heard both the counsel and from a perusal of the material on record, it is revealed that the 1st respondent herein filed M.C.No.409 of 2015 against the petitioner herein claiming a sum of Rs.50,000/- per month towards maintenance on the file of the Family Judge, Hyderabad. Pending the maintenance case, the 1st respondent filed CrI.M.P.No.259 of 2016 claiming interim maintenance. The said petition was ordered on 09.10.2017 directing the petitioner to pay a sum of Rs.8,000/- per month towards interim maintenance with effect from 28.01.2016 till the disposal of the case. Since the petitioner has not paid the maintenance, as ordered above, the 1st respondent filed CrI.M.P.No.198 of 2018 under Section 125 (3) Cr.P.C. The learned Family Judge by docket order dated 16.07.2018 passed the following order:

“Both the parties are called present. The due amount is Rs.1,92,000/- for a period of 24 months @ Rs.8,000/- per month. In spite of notice and directions, he failed to pay any amount. Hence, he is sentenced to suffer simple imprisonment for a period of 24 months or till he

pays the arrears whichever occur early. Call on 07.09.2018.”

Section 125 (3) Cr.P.C., contemplates that if any person so ordered fails without sufficient cause to comply with the order, any Magistrate, for every breach of the order, issue a warrant and may sentence such person for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be. However, such term may extend to one month or until payment if sooner made.

A perusal of the above said provision would indicate that there cannot be imprisonment for more than one month. In all, sub-section (3) of Section 125 Cr.P.C., is quite clear and it circumscribes the power of Magistrate to impose imprisonment for a term which may extend to one month or until payment, if sooner made. This power of Magistrate can not 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. By no stretch of imagination, the Magistrate may permit to impose sentence for more than one month.

In these circumstances, the impugned order to the extent of sentencing the petitioner to suffer simple imprisonment for a period of 24 months is liable to be modified.

Accordingly, the criminal revision case is allowed, modifying the docket order dated 16.07.2018 in CrI.M.P.No.198 of 2018 in M.C.No.409 of 2015 sentencing the petitioner to suffer simple imprisonment for a period of 24 months to one month or till he pays the arrears, whichever occur earlier. It is needless to observe that the above said docket order is interfered to the extent as indicated above.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 10.08.2018.

Note: Furnish C.C. today.
(B/o.)
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