

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 2631 OF 2014

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for respondent Nos. 2 to 4.

2. The present Criminal Revision Case is filed challenging the orders passed in CrI.M.P.No.1520 of 2013 in M.C.No.42 of 2008 dated 3.12.2014 on the file of the Court of the I.Additional Judicial Magistrate of First Class, Tadepalligudem, directing the petitioner to undergo 12 months default sentence for non payment of maintenance from 7.2.2012 to 6.2.2013.

3. The facts in brief are that respondent Nos. 2 to 4 herein filed M.C.No.42 of 2008 against the petitioner claiming maintenance. The said maintenance case was disposed of on 7.2.2011 directing the petitioner to pay a sum of Rs.1,500/- p.m. to respondent No.2 and Rs.1,000/- p.m. each to respondent Nos. 3 and 4 towards maintenance. Since the petitioner failed to comply with the said orders, the respondent Nos. 2 to 4 filed CrI.M.P.No.1520 of 2013 in M.C.No.42 of 2008 under Section 73 of Cr.P.C. to issue warrant against the petitioner as he wilfully neglected to receive the notice and pay the maintenance. The learned Magistrate, after hearing, was pleased to allow the said petition by orders dated 3.12.2014

whereby directed the petitioner herein to undergo 12 months default sentence for non payment of 12 months maintenance. Aggrieved by the same, the present Criminal Revision Case is filed.

4. Learned counsel for the petitioner would contend that the impugned orders passed in CrI.M.P.No.1520 of 2013 are improper and unknown to canons of law. Learned Magistrate erred in directing the petitioner to undergo 12 months default sentence contrary to Section 125 (3) of Cr.P.C. He also contended that the petitioner has no means to pay the arrears of maintenance.

5. Learned counsel appearing for respondent Nos. 2 to 4, supported the impugned orders and stated that the petitioner has contracted second marriage and leading a matrimonial life with his second wife.

6. Having heard both the counsel and from the perusal of the material on record, the point that arises for consideration is:

“Whether the impugned order is sustainable in law in the light of Section 125 (3) Cr.P.C.?”

7. Section 125 Cr.P.C. deals with maintenance of wives, children and parents. 125(1) Cr.P.C. contemplates grant of maintenance. However, 125 (3) Cr.P.C. contemplates that if

any person fails to pay maintenance as ordered without sufficient cause, any Magistrate may, for every breach of the order, issue a warrant for the whole or any part of each month's allowance 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. Provided that no warrant shall be issued for the recovery of any amount due under this section unless application is made to the Court within a period of one year from the date on which it became due.

8. In the case on hand, though the petitioner has not paid the maintenance for 12 months, the sentence of imprisonment as contemplated under the above said provision, cannot exceed one month. However, the learned Magistrate, by observing that the petitioner has not paid the maintenance for 12 months, directed the petitioner to undergo imprisonment for 12 months for non payment of 12 months maintenance from 7.2.2012 to 6.2.2013. The said order of the learned Magistrate is contrary to the provisions of Section 125 (3) Cr.P.C. and as such the same is liable to be set aside.

9. In the result, Criminal Revision Case is allowed by setting aside the orders passed in CrI.M.P.No.1520 of 2013 in

M.C.No.42 of 2008 dated 3.12.2014 on the file of the Court of the I. Additional Judicial Magistrate of I Class, Tadepalligudem. It is needless to observe that respondent Nos. 2 to 4 have every liberty to move a fresh application claiming arrears of maintenance if any, till date and on such application, the learned Magistrate is directed to dispose of the same as per law.

Pending miscellaneous petitions, if any, shall stand closed.

Date: 4.10.2018

KPM



P. KESHAVA RAO,J