

Andhra High Court

Abdul Gafaoor Alias Ashan vs Smt. Hameema Khatoon And Ors. on 15 September, 2003

Equivalent citations: 2003 (2) ALD Cri 902, 2004 CriLJ 1280, I (2004) DMC 693

Author: B Nazki

Bench: B Nazki, K Bhanu

JUDGMENT Bilal Nazki, J.

1. We have heard learned senior counsel Sri C. Padmanabha Reddy as Amicus Curiae and also learned Public Prosecutor. No other advocate appeared.

2. This is a reference made by a learned single Judge of this Court as he found cleavage of opinion with regard to interpretation of sub-section (3) of Section 125 of the Code of Criminal Procedure (for short "the Code"). The short question is as to what is the period for which a person can be detained in terms of Section 125 (3) of the Code if he fails to pay the maintenance, even after a warrant in terms of Section 125(3) of the Code is issued. The learned single Judge took notice of a judgment of this Court reported in Laxmi v. Nakka Narayan Goud, (1993) 2 Andh LT (Cri) 553 ; 1994 Cri LJ 565, in which it has been held that detention can be for any period till the payment is made. Another judgment which the learned single Judge noted was reported in P. Brammaiah v. P. Padma, (1990) 1 Andh LT 370, in which it has been held that the detention could in no case be more than 12 months. Section 125(3) of the Code lays down.

"125. Order for maintenance of wives, children and parents :--

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance 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."

3. From bare perusal of this provision, it becomes clear that a person against whom an order under Section 125(3) of the Code is made does not become liable to imprisonment on passing of an order of maintenance, his liability to suffer imprisonment only starts if he fails to respond to a warrant issued under Section 125 (3) of the Code for payment of maintenance. A warrant has to be issued under Section 125(3) of the Code for payment of maintenance, when an application is made by the person who has been held entitled to maintenance under Section 125 of the Code. When such a warrant is issued for making payment of maintenance, it has to be levied as the amount due in the manner provided for levying fines and if this warrant is not responded by making the payment, then the Magistrate can order imprisonment and the imprisonment in no case can exceed one month. Therefore, it is immaterial whether there were arrears of 12 months or of any other duration. The material question is whether a warrant under Section 125(3) been issued or not and in case of one warrant issued under Section 125(3) of the Code, there can only be one imprisonment and the maximum imprisonment would be one month. So in case a person chooses to file an application under Section 125(3) of the Code on every successive month on failure to get maintenance, she may get successive orders of imprisonment if the person against whom the warrant is issued fails to

make the payment. But if a person chooses to make an application after several months, then again she will be able to get an order of imprisonment on failure to make the payment which will be only a maximum imprisonment of one month. We are fortified in our view by a judgment of the Supreme Court reported in *Shahada Khatoon v. Amjad Ali*, 1999 SCC (Cri) 1029 : (1999 Cri LJ 5060). This judgment is a very short judgment which is reproduced below.

"The short question that arises for consideration is whether the learned single Judge of Patna High Court correctly interpreted Sub-section (3) of Section 125 of Cr.P.C. by directing that the Magistrate can only sentence for a period of one month or until payment, if sooner made. The learned counsel for the appellants contends that the liability of the husband arising out of an order passed under Section 125 to make payment of maintenance is a continuing one and on account of non-payment there has been a breach of the order and therefore the Magistrate would be entitled to impose sentence on such a person continuing him in custody until payment is made. We are unable to accept this contention of the learned counsel for the appellants. The language of sub-section (3) of Section 125 is quite clear and it circumstances the power of the Magistrate to impose imprisonment for a term which may extend to one month or until the payment, if sooner made. This 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. By no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month. In that view of the matter the High Court was fully justified in passing the impugned order and we see no infirmity in the said order to be interfered with by this Court. The appeal accordingly fails and is dismissed."

4. Keeping in view the judgment of the Supreme Court and the discussion we have made hereinabove, we feel that both the views of the learned single Judges reported in *Laxmi v. Nakka Narayan Goud* (1994 Cri LJ 565) (supra) and *P. Brahmaiah v. P. Padma* (1990 (1) Andh LT 370) (supra) are not in conformity with the views of the Supreme Court. Therefore, the law laid down by the learned single Judges in both the judgments is not good law. Accordingly the reference is answered. The matter be placed before the learned single Judge.