

***THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY**

+Criminal Revision Case No.1119 of 2012

%24.12.2012

Pitchika Lakshmi

...PETITIONER

Vs.

\$ State of Andhra Pradaesh, rep. by it's
Public Prosecutor, High Court of A.P.

...RESPONDENT

< GIST:

> HEAD NOTE:

!Counsel for Petitioner : Sri Saibaba Itapu

^Counsel for Respondent No.1: G.Rama Gopal

Counsel for Respondent No.2: Public
Prosecutor

? Cases referred

2009 Cri.L.J 920

AIR 2007 (DOC) 211 (KER.) (DB)

2005(4) Supreme 93

2004 Cri.L.J 1280

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

-
Criminal Revision Case No.1119 of 2012

-
(Dated: 24-12-2012)

Between:

Pitchika Lakshmi

...Petitioner

A n d

State of Andhra Pradesh, rep. by
It's Public Prosecutor, High Court of A.P.

...Respondent

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Criminal Revision Case No.1119 of 2012

ORDER:

This revision is directed against the order dated 13-6-2011 passed in CrI.M.P.No.769 of 2010 in M.C.No.193 of 2003 on the file of the Judge, Family Court-cum-IV Additional District and Sessions Judge, Vijayawada.

2. The petitioners are wife and daughter of the 1st respondent. They filed M.C.No.193 of 2003 claiming maintenance. The said M.C came to be allowed on 25-11-2005 granting maintenance to them at the rate of Rs.2,500/- per month each. Aggrieved by the order, the 1st respondent filed Criminal Revision Case No.2091 of 2005. The revision came to be disposed on 20-9-2010 reducing the maintenance from Rs.2,500/- to Rs.1,750/- to wife and from Rs.2,500/- to Rs.2000/- to the daughter. The 1st respondent failed to pay maintenance as ordered in Criminal Revision Case. Therefore, the wife and the daughter filed CrI.M.P.No.769 of 2010 under Section 125(3) and 128 of Cr.P.C seeking arrears of maintenance of Rs.2,85,600/-. Since the 1st respondent failed to pay the arrears, the learned Judge of the Family Court committed the 1st respondent to civil prison for one month or till payment of arrears whichever is earlier, by order dated 13-6-

2011. The wife and the daughter filed this revision assailing the order dated 13-6-2011 limiting the period of imprisonment for one month only.

3. Notice to the 1st respondent came to be ordered on 20-12-2011. The 1st respondent entered appearance through a counsel.

4. Heard learned counsel appearing for the parties.

5. It is contended by the learned counsel appearing for the petitioners that committing the 1st respondent to prison for one month on failure of paying the arrears of maintenance is not in accordance with the provisions of Section 125 Cr.P.C. In a way, his contention is that the 1st respondent is to be detained in civil prison till payment of arrears and there cannot be any limitation with regard to period of confinement in prison. In support of his contention, reliance has been placed on the judgment of Gujarat High Court in **Suo Motu v. State of Gujarat**^[1], **Sunil Kumar v. Jalaja**^[2], and judgment of Supreme Court in **Shantha @ Usadevi & Anr. V. B.G.Shivananjappa**^[3].

6. Learned counsel appearing for the 1st respondent contends that the order impugned in the revision does not suffer from any illegality, in view of the Division Bench judgment of this Court in **Abdul Gafaor @ Ashan v. Smt. Hameema Khatoon and others**^[4].

7. The issue involved in this revision is whether the 1st respondent is to be confined in prison till realization of the arrears of maintenance or the period which may extend to one month. This issue is no more *res integra* in view of the Division Bench judgment of this court,

wherein it has been held as hereunder:-

“(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."

8. In view of the authoritative pronouncement of this Court in the above-referred judgment, the order impugned in the revision cannot be found fault.

9. Accordingly the Criminal Revision Case is dismissed.

B.SESHASAYANA REDDY, J

Dt.24-12-2012

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[1] 2009 Cri.L.J 920

[2] AIR 2007 (DOC) 211 (KER.) (DB)

[3] 2005(4) Supreme 93

[4] 2004 CRI.L.J 1280