

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
(Through Video Conferencing)

CRR-1218-2021 (O&M)
Date of decision: 12.11.2021

Bal Raj Petitioner

Versus

Priya and others Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Manoj Kumar Pundhir, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been filed to assail the order dated 16.03.2020 passed by the Family Court, Jagadhri in an application moved under Section 125(3) Cr.P.C. vide which the petitioner was ordered to undergo a composite sentence of civil imprisonment for a period of twelve months for default of payment of maintenance allowance of 66 months (w.e.f. 27.05.2014 to 27.02.2020), amounting to Rs.2,74,000/-.

Learned counsel for the petitioner has vehemently urged that the Family Court gravely erred while passing the impugned order without appreciating that for default of payment of arrears, no composite sentence could have been ordered. In support, he placed reliance upon the judgment of Supreme Court in ***Shahada Khatoon and others Vs. Amjad Ali and others : (1999) 5 SCC 672***. It was also submitted that respondents No.1 to 3 were not even his wife and children. Besides, they were already getting widow and destitute

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children pension from the Government of Haryana. It was submitted that soon after the passing of the impugned order the petitioner was sentenced to civil imprisonment on 16.03.2020. On account of the outbreak of the pandemic, he was released on parole but subsequently he was directed by the jail authorities to surrender back, which he did on 10.10.2021. Ever since then he was confined in the District Prison at Yamuna Nagar.

On being put to notice Mr. Munish, Mittal, Advocate has put in appearance and opposed the prayer and submissions made by the counsel opposite.

Heard learned counsel for the parties and perused the material on record.

The question which arises for determination before this Court is as to whether a Court can in exercise of its powers under Section 125(3) Cr.P.C. impose composite civil imprisonment in case of default in payment of maintenance arrears/allowances, for a period of more than one month, in a single stroke.

The relevant provisions of Section 125(3) Cr.P.C. are extracted as under:-

“125(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 allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month

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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 be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

A perusal of the aforementioned leaves no manner of doubt that for breach of payment of maintenance for each month, the Court can impose a maximum sentence of one month only, unless of course, if the payment of the arrears is made sooner. In ***Shahada Khatoon's case (Supra)***, the Supreme Court while dealing with a similar question held in no uncertain terms that the powers of the Magistrate are restricted and no sentence exceeding the maximum i.e. one month, can be imposed for default, and if at all the default persists even after the expiry of one month the only remedy available to the aggrieved party would be to approach the Magistrate concerned again after the expiry of one month for enforcing her claim of maintenance for sending the delinquent husband to civil imprisonment. Therefore, what flows from ***Shahada Khatoon's case (supra)*** is that the defaulter can under no circumstances be ordered to undergo composite civil imprisonment for

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a period beyond one month irrespective of the fact that the arrears etc. claimed in a single application by the aggrieved party may be for more than one month.

As a sequel to the above, the impugned order dated 16.03.2020 is set aside being wholly unsustainable and against the settled law. The petitioner shall be forthwith set at liberty, if not required in any other case.

Before parting with this order, liberty is granted to the respondents to file a fresh application, if they so wish, asserting non-compliance of the order passed under Section 125 Cr.P.C.

12.11.2021

Vinay/sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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