

Karulal Vs. Kantibai

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Court : Madhya Pradesh

Decided On : Feb-11-1993

Reported in : II(1993)DMC345

Judge : A.R. Tiwari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : M. Cr. C. No.1097 of 1991

Appellant : Karulal

Respondent : Kantibai

Advocate for Def. : Agrawal, Adv.

Advocate for Pet/Ap. : Bhatnagar, Adv.

Judgement :

A.R. Tiwari, J.

1. This is an applications filed under Section 482 Cr. P.C.

2. Facts stated in brief are that the non-applicant had filed an application registered as MJC No. 21/83 under Section 125 Cr. P.C. in the Court of Judicial Magistrate, First Class, Ratlam on 24-1-1983. By order dated 3.6.1985, the Court had accepted this application and granted allowance of maintenance at the rate of

200/- per month payable from the date of application. The revision preferred against this order dated 3.6.85 was dismissed and as such this order had attained finality. Thereafter, the non-applicant initiated the proceeding for the enforcement of the aforesaid order. On non-payment, the applicant was also sent to Civil Jail for some time. At present he is out of jail.

3. In AIR 1989 S.C. 232 Smt. Kuldip Kaur v. Surinder Singh and Anr., it has been held that sentencing a person to jail on his default in payment as ordered in such proceedings is only a mode of enforcement and not a mode of satisfaction of liability. It is, thus, clear that mere detention in civil jail is no answer to the liability. Shri Bhatnagar does not dispute this position of law. His only submission is that by now, the level of arrears of maintenance allowance is quite huge and the applicant, being poor and of limited means was unable to satisfy this liability at once. He, therefore, prays that reasonable time to allowed to enable the applicant to honour mandate of the order and discharge the liability. He prayed six months time for this purpose.

4. It is urged that the applicant has paid Rs. 4,800/- on the basis of directions issued by this Court on 9-5-1991. It is, thus, luculent that no payment has been made despite lapse of two years from such direction. Parties submit that level of arrears by now, even after taking into account the aforesaid payment is in the vicinity of about Rs. 20,000/-, his itself justifies grant of at least breathing time even at this distance of time so as to soften the rigour of the accumulated liability. The object behind such proceedings is to move in the direction of securing payment rather imposing penalty. Even detention in jail is one of the modes of enforcement but generates disability to make arrangement.

5. Accordingly it seems just and proper to give reasonable time to the applicant to pay this amount. It is, therefore, directed that the applicant shall pay this amount at the rate of Rs. 4,000/- per month so that the load is distributed and the entire liability is satisfied in about five months from today in addition to monthly payment as ordered.

6. This facility is given only as a special case purely on humanitarian ground on the following conditions :--

(a) The applicant shall file solvent security of Rs. 10,000/-within 10 days from today for due discharge of the liability to the satisfaction of the Court below.

(b) the applicant shall pay the first instalment of Rs. 4,000/-+ 200/- on 9th March, 1993 and thereafter, shall continue to pay the aforesaid amount by 9th of every month.

In default of payment of the aforesaid amount in any month as directed the Court below shall be free to enforce the order in toto at once by appropriate steps.

8. This petition, thus, stands disposed of in term indicated above.

9. It is directed that the records of the Courts below shall be returned immediately.

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