

Sundaran Vs. Sumathi

Sundaran Vs. Sumathi

SooperKanoon Citation : sooperkanoon.com/726803

Court : Kerala

Decided On : Jul-06-2006

Reported in : 2006(3)KLT725

Judge : R. Basant, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 125(3)

Appeal No. : R.P. (F.C.) No. 96 of 2005

Appellant : Sundaran

Respondent : Sumathi

Advocate for Pet/Ap. : Cibi Thomas, Adv.

Disposition : Appeal dismissed

Judgement :

R. Basant, J.

1. Does the decision in Shahada Khatoon v. Amjad Ali 2000 (1) KIT 696 (SC) fetter the powers of the Magistrate/Family Court to sentence a defaulter to one month's imprisonment for the default in payment of each month's maintenance? Is there a cap of one month on the total period of imprisonment which can be imposed when complaint is raised in one Execution Petition about default in

respect of more than one month? These are the questions of interest that arise for consideration in this revision petition.

2. A look at the statutory provisions first. Under Section 125 Cr. P.C. a father/husband/child having sufficient means who refuses or neglects to maintain his child/wife/parent unable to maintain himself or herself, can be visited with an order directing payment of maintenance for each month. If he commits default in making such payment such order passed by the criminal court can be enforced under Section 125(3) Cr. P.C. by a sentence of imprisonment, I extract below Section 125(3) CPC.

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

xxx xxx xxx

(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 for the maintenance or the interim maintenance and expenses of proceeding, 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 be made to the Court to levy such amount within a period of one year from the date on which it became due:

(emphasis supplied)

3. A plain reading of the above statutory provision makes it clear that for the breach of the obligation to pay whole or any part of each month's maintenance, such defaulter can be sentenced to imprisonment for one month. Of course, he shall be released if payment is sooner made. Such application for execution of the order directing payment of maintenance has to be made within one year.

4. A reading of the statutory provision can thus leave behind no doubt that if there is a breach committed of the obligation to pay maintenance for a period exceeding one month, for default for each month, the defaulter can be sentenced to imprisonment for a period of one month. In short, if there is default for 'n' number of months imprisonment for 'n' number of months can, in the maximum, be imposed, of course, subject to the condition that 'n' cannot exceed 12.

5. The counsel argues that the Supreme Court in Shahada's case (supra) has laid down the proposition that whatever be the number of months of default, a defaulter can be sentenced to imprisonment only for one month if such complaint about breach in respect of plurality of months is made in one petition.

6. On the face of it the contention appears to me to be illogical, irrational and unreasonable. The statutory provisions under Section 125(3) Cr. P.C. make it very clear that one month's imprisonment is the maximum imprisonment for each month's default. If that be so, merely because the destitute lady/child/parent has come to the Court to complain about default in respect of the amount due for more months than one, the defaulter cannot obviously claim immunity or any advantage.

7. The policy of law cannot be to compel such claimants to come to Court with separate petitions for each month's default. That would be a totally unreasonable manner of approaching the question. I requested the learned Counsel for the petitioner to take me through the judgment in Shahada Khatoon in detail to find out whether any such proposition emerges from the decision of the Supreme Court. It is a very short judgment. I extract the entire judgment below:

The short question that arises for consideration is whether the learned Single Judge of the Patna High Court correctly interpreted Sub-section(3) of Section 25 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 circumscribes 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.

(emphasis supplied)

8. I have carefully gone through each sentence in the judgment extracted above. It is impossible to deduce the conclusion which the learned Counsel for the petitioner wants this Court to accept from any sentence of the judgment or the cumulative effect of all the sentences. The Supreme Court has not held so. It would be unreasonable for this Court to hold that the Supreme Court has held so because it goes against the policy of law and the specific stipulations in Section 125(3). I have adverted to this contention in detail, though a reading of the statutory provisions in the light of the decision of the Supreme Court does not leave behind any doubt in my mind, only because it is submitted at the Bar that many Family Courts/Magistrates do choose to follow the interpretation which the petitioner wants to place on the decision in Shahada 's case, I need only say that the Supreme Court has not held so. It would be myopic and puerile to hold that the Supreme Court said so. The statutory provisions must lead to the inevitable and unmistakable conclusion that each month's default would be visited with the maximum sentence of one month's imprisonment. The mere fact that the destitute has not chosen to complain' every month and has chosen to complain of the breach in respect of plurality of months in one petition within a period of 12 months cannot at all deliver to the defaulter any undeserved advantage. This contention is obviously unacceptable and unsustainable. The Supreme Court was obviously not considering the question whether more than one months imprisonment can be awarded for breach of the direction to pay maintenance committed in respect of

more months than one. Though the tactual matrix is not adverted to in detail in the judgment extracted above it is evident that the Supreme Court was considering the question whether more than one month's imprisonment can be imposed on the defaulter if the breach to pay maintenance for one month continues for more months than one. If the default to pay maintenance for a particular month continues for any length of time, maximum imprisonment of one month alone can be imposed. That is all what the Supreme Court has held. The Supreme Court was considering the contention by the counsel that in the event of breach, the defaulter can be detained in custody till the payment is made. That is evident from the judgment see the portion underlined which refers to the contention. That contention was repelled holding that endless detention until payment was effected cannot be made. There is no reported decision of this Court or any other court on the interpretation of Shahada Khatoon except that of the Allahabad High Court. I respectfully disagree with the learned Judge of the Allahabad High Court who understood Shahada Khatoon differently in *Dhilip Kumar v. Family Court* (2000) Cri. L.J. 3893 without reference to the earlier decisions of that Court in *Emperor v. Beni* AIR 1938 Allahabad 386 (F.B.) and *Ram Bilas v. Bhagwati Devi* 1991 Cri.L.J. 1098.

9. To sum up-

(a) If there is no payment of maintenance due for ' n' number of months the defaulter in one Execution Petition can be sentenced to imprisonment upto a maximum of 'n' months, provided 'n' does not exceed 12.

(b) If there is breach of payment of maintenance due for one particular month - notwithstanding the fact that such payment was not made for V months from the date on which it became due, the defaulter can be sentenced only to maximum imprisonment for one month and not 'n' months. Even when the breach in respect of one particular month continues for any length of time, the maximum sentence for breach of the liability to pay one month's maintenance continues to be one month only.

10. Precedents cannot be read or understood ignoring the specific language of the statutory provisions. The interpretation which the petitioner's counsel wants to

place on Shahada Khatoon is unacceptable for the reason that the same suffers from that specific vice.

11. This revision petition is accordingly dismissed. Communicate copy of this order to all the Judges of the Family Courts.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com