

In Re: Md. Jahangir

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Court : Kolkata

Decided On : Aug-09-2004

Reported in : 2005(1)CHN100,2005CriLJ237,I(2005)DMC591

Judge : D.P. Sengupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125(3), 401 and 482

Appeal No. : C.R.R. No. 1989 of 2004

Appellant : In Re: Md. Jahangir

Advocate for Pet/Ap. : Bijoy Adhikary and ;Sujit Bhattacharya, Advs.

Judgement :

D.P. Sengupta, J.

1. In the present application under Section 401 read with Section 482 Cr. PC, the petitioner has challenged the order dated 28.6.2004 passed by the learned Judge, Family Court, Calcutta in Misc. Ex. Case No. 27 of 2004. The petitioner is the husband and for non-payment of the amount of maintenance, a proceeding under Section 125(3) Cr. PC was initiated and the husband/ petitioner was brought under arrest as he failed to make the payment.

2. It is submitted by the learned advocate of the petitioner that the petitioner is in custody for 42 days and accordingly, the petitioner made a prayer before the

learned Magistrate for his release, which was turned down by the learned Magistrate, who fixed the next date on 28.7.2004 for production of the opposite party and payment of the amount.

3. In disposing of the present application, I rely upon a judgment of the Hon'ble Supreme Court reported in 1999(5) Supreme Court Cases 672, Shahada Khatoon & Ors. v. Amjad Ali & Ors. In the said judgment, it was held by the Hon'ble Apex Court as follows:-

'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.'

4. On perusal of the said judgment, I find that the Supreme Court observed that by no stretch of imagination, the learned Magistrate can be permitted to impose sentence for more than one month. The Supreme Court has observed that the wife has no remedy but can approach for similar relief, i.e., for relief as permitted under Section 125(3) Cr. PC. In view of the judgment of the Hon'ble Apex Court, I find that the impugned order by which the learned Magistrate refused to release the husband/petitioner, was illegal and he passed the order against the judgment of the Hon'ble Apex Court as referred to above.

5. Accordingly, the impugned order is set aside. Liberty is granted to the wife to approach the learned Magistrate for further relief as has been ensured in the judgment of the Hon'ble Supreme Court as referred to above.

6. The revisional application is accordingly disposed of. It is further directed that if the wife makes any prayer, the learned Magistrate will dispose of the same in accordance with law without being influenced by any observation made by this Court keeping in view of the judgment of the Hon'ble Supreme Court as referred to above. The petition is, thus, disposed of.

7. Let a plain copy of this order, duly countersigned by the Assistant Registrar (Ct.) be given to the learned advocate of the petitioner on an usual undertakings.

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