

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.R.C.Nos.1126 to 1128 of 2006
& M.P.Nos.1 + 1 + 1 of 2006

R.Kumaravadivel .. Petitioner in
all the Revisions

Vs.

1. Lakshmi
2. Minor Karthika
3. Minor Kumar

.. Respondents in all
the Revisions

(Respondents 2 and 3
rep by their mother guardian
1st Respondent)

* * *

Prayer : Petition filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the orders dated 28.10.2003 passed in C.M.P.Nos.270, 271 and 269 of 2001 in M.C.No.193 of 1995 on the file of the learned Family Judge, Coimbatore.

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For Petitioner in : Mr.SU.Srinivasan
all the Revisions

For Respondents in : Mr.V.Parthiban
all the Revisions

O R D E R

Mr.Su.Srinivasan, learned counsel appearing for the petitioner in all these Revisions submitted that the petitioner is the husband of the first respondent herein and he has come forward with these revisions challenging the order passed by the learned Family Court Judge, Coimbatore in C.M.P.Nos.269, 270 and 271 of 2001 in M.C.No.193 of 1995 dated 28.10.2003 passing the order of arrest of the petitioner herein for the non-payment of the award of maintenance passed by the learned Special Judge, Family Court.

2. It is submitted by the learned counsel for the petitioner that the order of maintenance was passed by the learned Family Court Judge, Coimbatore, on 22.10.1998 directing the petitioner herein to pay a maintenance of Rs.500/- each of

the respondents 1 to 3 totalling to Rs.1,500/- p.m. It is also submitted by the learned counsel for the petitioner that as per the order of the learned Family court Judge, the petitioner has to pay the arrears of maintenance amount from the date of petition i.e. From 25.04.1991 to till the date of order i.e. 22.10.1998. It is submitted by the learned counsel for the petitioner that the arrears of the maintenance amount were not paid by the petitioner herein and as a result the respondent filed the above C.M.Ps for directing the petitioner to pay the arrears and for praying for issuance of warrant of arrest as the petitioner has not paid the arrears towards the amount of maintenance awarded by the learned Family Judge. The learned counsel for the petitioner further submitted that the learned Judge has passed a common order in all the three C.M.Ps on 28.10.2003 sentencing the petitioner to undergo 46 months simple imprisonment in C.M.P.No.269 of 2001, 12 months simple imprisonment in C.M.P.No.270 of 2001 and 9 months in C.M.P.No.271 of 2001.

3. The learned counsel for the petitioner also submits that being aggrieved by the above said order of the learned Special Judge, Family Court, the petitioner has come forward with these Revisions on the ground that the order passed by the learned Special Judge, Family Court, is against law and against the specific provision under Section 125 (3) of Cr.P.C.

4. The learned counsel for the petitioner further submits that as far as the provision under Section 125 (3) of Cr.P.C. is concerned, the family court Judge is entitled to pass an order of sentence only one month and as such the impugned order passed by the learned Family court Judge awarding 46 months, 12 months and 9 months totalling to 67 months is liable to set aside.

5. Heard the learned counsel for the respondents on the submission made by the learned counsel for the petitioner. Mr.V.Parthiban, learned counsel for the respondents submitted that as a matter of fact there were arrears in respect of payment of maintenance award passed by the learned Family Court Judge, Coimbatore.

6. I have carefully considered the submission of both sides and also perused the impugned order passed by the learned Family Court Judge.

7. A perusal of the impugned order disclosed that the learned Family Court Judge has passed the order of arrest and sentence in all the three C.M.Ps filed by the respondent herein sentencing the petitioner to undergo 46 months, 12 months and 9 months totalling to 67 months. It is pertinent to note Section 125 (3) Cr.P.C. which reads hereunder :

125. Order for maintenance of wives, children and parents -

(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:

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, any may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

Therefore, the provision under Section 125 (3) Cr.P.C. contemplates that under execution of warrant of imprisonment may extend for a period of only one month. Therefore, this Court is of the considered view that impugned order passed by the learned Family Court is contrary to the provision under Section 125 (3) Cr.P.C. The learned counsel for the petitioner has rightly placed reliance on the decision of the Hon'ble Supreme Court SHAHADA KHATOON AND OTHERS V. AMJAD ALI AND OTHERS reported in 1999 (5) SCC 672.

8. The Hon'ble Supreme Court of India in that that decision held as follows :

"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 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 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."

9. It is also seen that this Court also taken a similar view by following the above said decision of the Hon'ble Supreme Court in MAHBOOB BASHA V. NANNIMA @ HAJARA BIBI AND ANOTHER reported in 2005 (1) L.W. (Cr1.) 384.

10. Therefore, in view of the above said well settled principle of law laid down by the Apex Court, this Court is constrained to set aside the impugned order dated 28.10.2003 made in C.M.P.Nos.270, 271 and 269 of 2001 in M.C.No.193 of 1995 on the file of the learned Family Judge, Coimbatore, as the same is contrary to provision under Section 125 (3) Cr.P.C.

11. These petitions are ordered accordingly. Consequently, connected Miscellaneous Petitions are closed.
Gg

Sd/

Asst.Registrar

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Sub Asst.Registrar

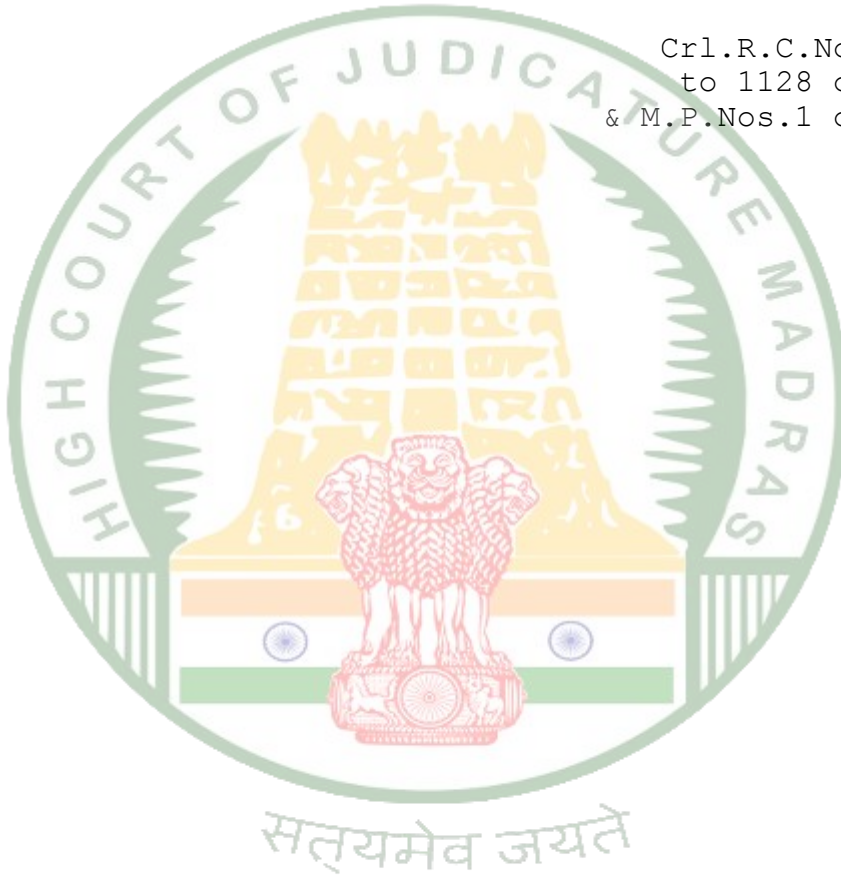
To

The Judge,
Family Court, Coimbatore.

+ one cc to Mr. Su.Srinivasan, Advocate sr no. 20456
+ one cc to Mr. V. Parthiban, Advocate sr no. 20399

JRG(CO)
NM(02.04.07)

Crl.R.C.Nos.1126
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& M.P.Nos.1 of 2006



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