
(1994) 05 P&H CK 0095

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 16645-M of 1993

Puran Singh

APPELLANT

Vs

Surjit Kaur

RESPONDENT

Date of Decision: May 25, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125(3)

Citation: (1995) 109 PLR 559

Hon'ble Judges: A.S. Nehra, J

Bench: Single Bench

Advocate: P.P.S. Duggal, for the Appellant; Jaswant Jain, for the Respondent

Final Decision: Dismissed

Judgement

A.S. Nehra, J.

Puran Singh has filed this petition u/s 402 read with section 401, Code of Criminal Procedure for setting aside the order dated 11.10.1993 passed by Sub Divisional Magistrate, Fatehabad, by which the petitioner was ordered to be sent to civil prison for six months, i.e., from 27.9.1993 to 26.3.1994.

2. Briefly stated, the facts of the case are:-

The respondent Surjit Kaur filed a petition u/s 125 of the Code of Criminal Procedure (hereinafter referred to as the Code) for maintenance and, during the pendency of that petition, the learned counsel for the petitioner stated on 17.10.1992 that he had no instructions from the petitioner and the petition for maintenance was allowed on 14.11.1992, by which a sum of Rs. 350/- per month was allowed to the respondent from the date of the petition for maintenance. The respondent filed an application u/s 125(3) of the Code for recovery of an amount of Rs. 14,000/- from the petitioner for the period/from 12.8.1989 to 12.12.1992. Of the respondent's petition u/s 125(3) of the Code, warrants of arrest were issued against the petitioner and the petitioner was arrested and produced

before the Sub Divisional Magistrate on 27.9.1993 and the learned Sub Divisional Magistrate passed the following order:-

"Present: A.P., Advocate for the Decreeholder.

Puran Singh has been arrested on conditional warrant and produced before me. He be sent to custody for 9.10.93 till then, file be also summoned. In case he pays the amount of Rs. 14,000/- regarding the maintenance, he be released."

3. On 11.10.1993 Puran Singh made a statement that he has no property to pay the amount of maintenance to the respondent and, therefore, he was ordered to be sent to civil prison for six months.

4. The learned counsel for the petitioner, Mr. P.P.S. Duggal, Advocate, has contended that the order dated 11.10.1993 is illegal and without jurisdiction because, according to the provisions of section 125(3) of the Code, the petitioner can be sent to civil prison for not more than one month. A Full Bench of five Judges in [Emperor Vs. Beni](#), had examined section 488(3) of the Old Code of Criminal Procedure 1982 (hereinafter referred to as the Old Code), which reads as under:-

"The Magistrate may, for every breach of the order issue a warrant for levying the amount due in the manner hereinbefore provided for levying fines, and may sentence such person for the whole or any part of each months"s allowance remaining unpaid after the execution of the warrant to imprisonment for a term which may extend to one month."

5. Briefly stated the facts of Emperor v. Beni"s case (supra) were:-

"An order was passed against the applicant, Beni, on 7-8-1934 directing him to pay maintenance at the rate of Rs. 7/- per month to his wife Mst. Sitalia. This order was modified on 21.6.1937 when the amount was reduced from Rs. 7/- per month to Rs. 5/- per month. The applicant failed to comply with the order and accordingly, on 1.7.1937 he was sent to six month" rigorous imprisonment u/s 488(3) of the Code. On that date he was in arrears in respect of payment of maintenance of about 24 months."

In the revision, the learned Sessions Judge held that in respect of that, only one warrant had been issued and the applicant could not be sentenced to more than one month"s rigorous imprisonment, he accordingly referred the matter to the Allahabd High Court. The reference was referred to a Full Bench of five Judges of the Allahabad High Court. The reference made by the learned Sessions Judge was rejected and it was held:-

"The introduction of the words "for the whole or any part of each month"s allowance" is vital. If it be held that Magistrates can impose a term of imprisonment for only one month u/s 488, these words which the Legislative added in the Act of 1882 would be unmeaning. S.488 of the present Criminal P.C. of 1898 is in the same terms as S.488, Criminal P.C. of 1882. We are satisfied after a consideration of the terms of the section that the

intention of the Legislature was to empower the Magistrate after execution of one warrant only to sentence a person, who has defaulted in the payment of maintenance ordered u/s S.488, Criminal P.C., to imprisonment for a period of one month in respect of each month's default and that the section does not enjoin that there should be a separate warrant in respect of each term of imprisonment for one month. In other words, where arrears have been allowed to accumulate, the Court can issue one warrant and impose a cumulative sentence of imprisonment. We would observe that the decision in 20 Mad 3 (Allapichai Ravuthar v. Mohidin Bibi (1897) 20 Mad 3) has been followed in a number of other cases in Bhiku Khan v. Zahuran (1898) 25 Cal. 291 Emperor v. Sardar Muhammad AIR 1935 Lah 758 and Emperor v. Budhu Ram 50 I.C. 847."

6. After hearing the learned counsel for the parties, I hold that sub-section (3) of section 125 of the Code does not enjoin that there should be a separate warrant in respect of each term of imprisonment for the one month. In other words, where the arrears have been allowed to accumulate, the Court can issue one warrant and impose a cumulative sentence of imprisonment. On 11.10.1993 when the petitioner was ordered to be sent to civil prison, the arrears of more than six months were allowed to accumulate by the petitioner and, therefore, the Magistrate had the jurisdiction to issue a warrant and impose a cumulative sentence of imprisonment for six months on the petitioner. This view of mine is supported by Full Bench of five Judges in Emperor v. Beni (supra).

7. In view of the above discussion, I find no merit in this petition and the same is dismissed.