
In Re: Sk. Rejaul Haque @ Sk. Rejabul @ Rejaul Haque

CRR No. 1694 of 2012

Court: Calcutta High Court

Date of Decision: Sept. 7, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 125(3)

Citation: (2012) 09 CAL CK 0063

Hon'ble Judges: Toufique Uddin, J

Bench: Single Bench

Advocate: Mrityunjoy Goswami, for the Appellant; Sourav Chatterjee As Amicus Curiae, Mr. Bikram Banerjee and Ms. Sanchayita De for the O.P. No. 1, for the Respondent

Final Decision: Allowed

Judgement

Toufique Uddin, J.

This revision application arose out of order dated 5.4.2012 and 20.4.2012 passed by the learned Additional Chief

Judicial Magistrate, Kakdwip, South 24 Paraganas in Misc. Execution Case No. 14 of 2009 arising out of M. Case No. 74 of 1997 u/s 125 of

the Code of Criminal Procedure. None appears on behalf of the petitioner or on behalf of O.P. No. 2, The State.

2. Heard the learned counsel for O.P. No. 1.

3. The background of this revision in a nutshell is that the opposite party No. 1 claiming to be the wife of the petitioner filed a case u/s 125 of the

Code of Criminal Procedure against the present petitioner for maintenance of herself and for her minor daughter in M. Case No. 74 of 1997.

4. The petitioner contested that the case denying material allegations and taking the plea specially that the wife left his house of her own and she

was divorced on 15.1.97 and Talaqnama was sent to her by post. And the petitioner being a day-labourer earns Rs. 600/- to Rs. 700/-p.m. But

on hearing both sides learned Magistrate by order dated 30.3.2002 allowed the application for maintenance to the extent of Rs. 400/- in favour of

the wife and Rs. 300/- in favour of the daughter p.m. For non-payment of maintenance for the period from 1.1.2008 to 31.12.2008 an application

u/s 125(3) of the Code of Criminal Procedure was filed by the wife/opposite party for total sum of Rs. 8400/- which gave rise to M. Execution

Case No. 14 of 2009.

5. It was resisted by the petitioner on the plea that the opposite party was given talaq and as such she is not entitled to get any maintenance. The

petitioner neither paid the money nor was present on 14.9.2010 and as such warrant of arrest was issued against the petitioner by the learned

Magistrate without issuance of distress warrant. The petitioner was arrested on the strength of W.A. and produced before the court on 22.2.2012

and he was sent to Jail for nonpayment of money. Since his arrest he is in Jail for non-payment of money of Rs. 8400/- for 44 days till 5.4.2012

when the petitioner prayed for his release on bail but it was turned down and he was again put in Jail custody. He rejected the prayer for release

on bail.

6. It was contended by the learned counsel for the petitioner that the learned court below cannot keep the petitioner behind the bar for a period

exceeding one month. In support of his contention he placed before me two decisions as reported in 1999 CrLJ 5060 [Shahada Khatoon vs.

Amzad Ali] and (2005) CrLJ 237 [in Re: Md. Zahangir, the petitioner].

7. On the other hand, the learned counsel for the opposite party contended that there was no infirmity in the order in question and after expiry of

30 days the opposite party filed another execution case and hence there is no wrong for further detention as ordered by the learned court below.

8. I have duly considered the submissions of the rival parties and carefully examined the impugned orders in question.

9. In Kuldip Kaur Vs. Surinder Singh and Another, the Hon"ble Apex Court has held that imposition of sentence of imprisonment on defaulting

party will not discharge liability to pay maintenance amount. In 1999 CrLJ 5060 the Hon"ble Apex Court dealt with the matter of Section 125(3)

of the Code of Criminal Procedure exhaustively and held that the language of subsection (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 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 of non-compliance of the order of

the Magistrate the wife can approach again to the Magistrate for similar relief. By no stretch of imagination the Magistrate could be permitted to

impose sentence for more than one month.

10. In another decision referred to above reported in 2005 CrLJ 235, the Hon"ble High Court in the matter of Md. Zahangir held that the

Magistrate is not permitted u/s 125(3) of Code of Criminal Procedure to impose sentence for more than one month and refusal to release the

husband after he had served sentence of 42 days was held to be improper. After following the above noted decisions of the Hon"ble Apex Court,

it appears from the impugned order that the learned court below made a camouflage of the legal aspect as already settled by the Hon"ble Apex

Court. There cannot be any doubt further. By no stretch of imagination the period of sentence can exceed one month, even if composite petition

for arrear of 12 months is launched before the executing court. The impugned order appears ex facie to be not sustainable in the eye of law in view

of the legal position as propounded by the Hon"ble Apex Court in the above mentioned decision.

11. Accordingly, CRR No. 1694 of 2012 is allowed on contest but without cost.

12. The impugned order dated 25.4.2012 and 20.4.2012 are set aside. The husband/petitioner therein be released immediately.
Urgent certified

copies, if applied for, to be issued according to rules.