
(1999) 11 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : Criminal M. No. 26094-M of 1999

Angrej Singh @ Arjan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

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

Citation : (2000) 2 DMC 156 : (2000) 1 RCR(Criminal) 126

Hon'ble Judges : Bakhshish Kaur, J

Bench : Single Bench

Advocate : Malkiat Mann, for the Appellant; V.K. Garg and I.P.S. Sidhu, AAG, for the Respondent

Final Decision : Allowed

Judgement

Bakhshish Kaur, J.—Sukhpal Kaur-respondent No. 2 for herself and for daughter Nirlap Kaur respondent No. 3 applied, for maintenance by way of filing app- and Rs. 300/- respectively. Angrej ligation u/s 125 of the Criminal Procedure Code. They were allowed maintenance @ Rs. 500/- and Rs. 300/- respectively. Angrej Singh against whom the order was passed failed to pay the amount of maintenance as a result of which conditional warrants were issued against him. Even then he failed to pay the amount, therefore, he was sentenced to imprisonment for 11 months. Hence the impugned order dated February 13,1999 has been challenged by the petitioner.

2. I have heard Ms. Malkiat Mann, learned Counsel for the petitioner, Mr. I.P.S. Sidhu, AAG, Punjab appearing on behalf of State of Punjab and Mr. V.K. Garg Advocate, appearing on behalf of respondents 2 and 3.

3. Admittedly a sum of Rs. 9,600/- by way of maintenance had accumulated pertaining to the period 16.10.1997 to 15.10.1998. Petitioner failed to make the payment of this amount within the stipulated period, therefore, conditional warrants were issued. He was arrested, brought before the Court and even then

he failed to make the payment. Therefore, he was sentenced to undergo imprisonment for a period of 11 months. It was also ordered that in case he pays the maintenance amount in question then he be set free.

4. It is well settled that where a 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 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.

5. Section 125(3) is very clear on this point which reads as under:

"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 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 who refused to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

6. 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. The learned Counsel as cited in *Shahada Khatoon and Others Vs. Amjad Ali and Others*, wherein it was held that the power of the Magistrate cannot be enlarged and, therefore, the only remedy could be after expiry of one month for breach or non-compliance with the order of the Magistrate, wife can approach the Magistrate again for similar relief. By no stretch of imagination can the Magistrate be permitted to impose sentence of more than one month.

7. In view of the above, the impugned order which suffers from illegality and infirmity cannot be sustained and the same is hereby quashed.