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**(1999) 12 AHC CK 0026**

**In the Allahabad High Court**

**Case No :** Criminal Misc. Application No. 2376 of 1999

Dilip Kumar

APPELLANT

Vs

Family Court

RESPONDENT

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**Date of Decision :** 10-12-1999

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 125

**Citation :** (2000) CriLJ 3893 : (2001) 2 DMC 584 : (2001) 1 RCR(Criminal) 274

**Hon'ble Judges :** S.K. Agarwal, J

**Bench :** Single Bench

**Advocate :** Raj Karan Yadav, for the Appellant; A.G.A. and Shankar Suan, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.K. Agarwal, J.—Heard learned Counsel for applicant, Mr. Shankar Suan, learned Counsel for the opposite party, and also learned A.G.A. for the State.

2. On the last date, while admitting this application, a clear direction was given to the State Counsel that he shall also prepare himself on the question whether any Court deciding an application for recovery of the amount due u/s 125 Cr.P.C. to the wife from the delinquent husband can pass an order of his confinement for a period of one year compositively or any other consolidated period.

3. A perusal of Section 125(3) Cr.P.C. very clearly indicates that no such order can be passed by any Court, be it Family Court or a Court of a Judicial Magistrate. The Courts are entitled to pass an order against any delinquent husband who has not made the payment and allowed the wife to lead a destitute life, in the absence of such payment, to a confinement or imprisonment for a term which may extend to one month or until payment if sooner made. The earlier portion of this Sub-section clearly shows that this confinement of imprisonment will be against each month's default, Section 125(3), Cr.P.C. is quoted below :

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

4. From these it is clearly available that the person can be kept under confinement for each month's default and the confinement can be only for a period of one month. The subsequent part "until payment if sooner made" further clarifies the situation to the extent that such a husband can be confined to a period of one month even if the default is of more than a month and he can be allowed to come out of jail if the payment is made earlier at any point of time within this period. This very clearly indicates that if the payment is made within this period on any date his confinement will come to an end. The purpose behind this enactment of provision for confinement is to put an end to the sufferings of the wife by compelling the husband to pay the maintenance amount. The Court cannot keep him in confinement any further beyond a period of one month by one stroke of pen. In the present case an application was moved by the wife for the recovery of the arrears" amount which appears to be for several months.

The Family Judge has passed a consolidated order for 12 months" confinement of the applicant, i.e. for the total period of default. The applicant is the husband, who has failed to make payment of the maintenance amount allowed not only to the wife but also to his children. He has failed to discharge this obligation. The Court is vested with his extensive power with his interest in mind, i.e. compelling the husband to discharge his obligation imposed upon him by an order of a competent Court.

5. In view of the discussions made above, the order of the learned Family Judge is wholly unsustainable. I am fortified in my view by a latest decision of the Apex Court reported in *Shahada Khatoon v. Amjad Ali I* (2000) DMC 313 : IX (1999) SLT 392:2000 (1) AICLR 792. The Apex Court has gone to the extent of saying that the confinement can extend to only one month and if even after the expiry of one month the delinquent husband does not make the payment of arrears then the wife can approach the Magistrate again for a similar relief but the confinement of the husband must be only of one month. In the own words of the

Apex Court "By no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month". Thus, this latest decision of the Apex Court further lays down a fetter, in the exercise of this power by the Judicial Magistrate or the Family Judge to the extent that only a confinement for a period of one month can be passed on an application whether the amount claimed by the wife as arrears is for more than one month or for only a month. In one stroke no composite confinement can be directed by the Court. It very clearly flows from the above decision. This power can be exercised only after a warrant for recovery of the unpaid maintenance allowance is issued by the Court. This warrant is to be executed like any warrant of recovery of fine. This fine can be recovered like any land revenue arrears. Unless that exercise is first adhered to, this power of confinement to jail for his failure cannot be resorted to by any Court.

6. Accordingly, this application is allowed and the order passed by the Family Judge on 24.4.1999 is hereby quashed. However; it will be open for the Family Judge to pass a fresh, proper and judicial order in accordance with the provisions of law and as decided by the Apex Court in the aforesaid case in case if any application is moved by the wife.