

(2010) 01 BOM CK 0076

In the Bombay High Court

Case No : Criminal Revision Application No. 616 of 2009

Shri Manoj Markas Thorat

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

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

Citation : (2010) 1 Crimes 749 : (2011) 7 RCR(Criminal) 603

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : M.D. Modgi and Pradeep Tadmare, for the Appellant; Pillai, instructed by Madhavi Pillai, for Res. No. 2 and R.V. Newton, APP, for the Respondent

Final Decision : Dismissed

Judgement

Roshan Dalvi, J.—The Applicant is the husband, who is directed to pay the maintenance amount of Rs. 1,000/- per month to his wife u/s 125 of the Criminal Procedure Code (Cr.P.C.). He made several defaults. His wife was constrained to file several Execution Applications in the Family Court since, under the first proviso to Section 125, each Execution Application had to be made within a period of one year. The wife was constrained to file several Execution Applications for periods of 12 months or less each. Four such Execution Applications came to be disposed of under the impugned order of the Family Court No. 4, Mumbai, on 18.7.2009. Under each of those Applications, the Applicant herein was directed to suffer simple imprisonment for the number of months that the maintenance amount was left in arrears. Consequently, in ER No. 180 of 2006, the Applicant was directed to suffer simple imprisonment for 10 months or until payment of Rs. 10,500/-, whichever was earlier. In ER No. 179 of 2007, the Applicant was directed to suffer simple imprisonment for 11 months or until the payment of Rs. 11,000/-, whichever was earlier. In ER No. 219 of 2008, the Applicant was directed to suffer simple imprisonment for 11 months or until the payment of Rs. 11,000/-, whichever was earlier. In ER No. 245 of 2009, the Applicant was

directed to suffer simple imprisonment for 12 months or until the payment of Rs. 17,500/-, whichever was earlier (which was the enhanced amount of maintenance of Rs. 1,500/- per month). Further the Respondent was directed to suffer the sentence imposed under each of the succeeding Applications after completion of his sentence for each of those earlier Applications.

2. The Application as well as the order exemplify and bring out the stark reality of the agony the wives are required to undergo at the hands of the husbands who disobey orders of maintenance with impunity. It further shows the delay that is caused in our justice system for granting the wife her due after her Application has been filed in the Family Court. The Applications of the years 2006, 2007, 2008 and 2009 at-last came to be disposed of on 18.7.2009. The husband has been a consistent, persistent, consummate and inveterate defaulter. The order shows that no part of the maintenance amount came to be paid. The order further reflects that the maintenance amount came to be enhanced in or about 2009, but even initial amount of maintenance was not paid.

3. Section 125(3) of the Criminal Procedure Code sets out the consequences of failure of payment of the amount of maintenance ordered u/s 125(3) of the Cr. P.C. It runs thus:

(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 is sooner made.

The Sub-section gives the remedy for every breach of the order. Under that Sub-section the wife in favour of whom the order of the maintenance is passed would be entitled to take out an Execution Application as soon as a default of the payment of any maintenance for any month is made. For a single default in a single month constituting a breach of the order, the order of sentence can be passed. That order of sentence is for a term which may extend to one month or until payment is made, whichever is sooner. Since under the first proviso to that section the Application is required to be made within a period of one year from the date on which the amount to be recovered fell due, the wife is able to make one consolidated Application for a period of one year. Since usually the maintenance amount is payable monthly, the Application for recovery would comprise, at the highest, a consolidation of recovery for the last 12 months. Nevertheless, the wife would be entitled to take out 12 separate Execution Applications each month for the failure of payment in each of those months. If she takes out 12 separate Applications, she would be entitled to 12 separate sentences of imprisonment for term extending one month each or until payment is sooner made.

4. Whether under each Application the husband would be required to be sentenced for a period extending only one month even if the Application is made for a period of arrears came up for consideration in various orders, to which my attention has been drawn by the Advocate for the Applicant.

5. He has essentially relied upon the order passed by the Hon"ble Supreme Court in the case of Shahada Khatoon and Others Vs. Amjad Ali and Others, in which Section 125(3) of the Cr. P.C. came up for consideration. The argument made on behalf of the wife in that case was that the liability of the husband for making payment arising out of the order passed u/s 125 was a continuing one and hence he could be sentenced to imprisonment until the payment was made. That contention was not accepted. It was observed that the Magistrate had the power to impose imprisonment for a term extending one month or until payment if sooner made. After that sentence has been suffered for one month, the wife could again approach the Magistrate for similar reliefs, but the Magistrate could not impose sentence for more than one month. This observation came to be made upon rejection of the contention that the liability was a continuing one. For each offence the liability was separate and distinct. That liability extended to one month sentence. After one month the husband had to be released and even thereafter if the maintenance amount is not paid, the wife would be entitled to take out another such Application. The order in the case of Shahada Khatoon (supra) has not considered whether every breach of the order in a single Application would be a separate breach or not. The order also does not reflect whether the Execution Application taken out by the wife was for failure to make payment of maintenance of a single month or of 12 months together.

6. This aspect came to be considered by a Division Bench of this Court in the case of Gorakshnath Khandu Bagal Vs. State of Maharashtra and Others, In that case various judgments of various Courts, including the judgment in the case of Shahada Khatoon (supra) came to be considered. The question of whether the liability of the husband was continuing or not was seen. It was observed that what was considered in the case of Shahada Khatoon (supra) was that until an amount is paid, the husband was not required to be kept in jail. Hence the Division Bench considered that for every breach of the order the maximum sentence was one month and that even if the breach continued the husband would have to be released if he had served one month s sentence for one breach. This judgment in paragraph 9 considered the consequences of a number of breaches in a single Application thus:

If there are arrears for more than one month then the imprisonment exceeding for a period of one month can be imposed.

It further observed that in view of the first proviso to the Section, 12 defaults could be clubbed together and after every 12 defaults, a separate Application is to be filed. Consequently, it is further observed thus:

...In that eventuality in each application, as there are maximum 12 defaults, the

Magistrate may impose imprisonment extending upto a period of 12 months, but that is outer limit.

7. In view of this judgment, the other judgments of the Single Judges of the other Courts need not be adverted to.

8. It is seen that the impugned order is, therefore, correct. The learned Family Court Judge has exercised his power of sentencing the husband for every breach of the order of payment of maintenance to one month each and consequently, in 4 Execution Applications he has sentenced the husband to such number of months as were the arrears constituting that many breaches of the order of payment of compensation in each of the Applications.

9. The order is, therefore, correct and does not require any interference despite meticulous interpretation and vehement arguments of Mr. Modgi, the Advocate for the Applicant.

10. The Criminal Revision Application is, therefore, dismissed.