

(2005) 03 RAJ CK 0049

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 273 of 2005

Sunil Kumar Jain

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

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

Citation : (2005) 3 RCR(Criminal) 485 : (2005) 2 RLW 1425 : (2005) WLC 482

Hon'ble Judges : F.C. Bansal, J

Bench : Single Bench

Advocate : Neeraj K. Tiwari, for the Appellant; S.N. Gupta, Public Prosecutor, for the Respondent

Judgement

F.C. Bansal, J.—At joint request, the instant criminal revision petition is being disposed of finally at the admissions stage. Notices are not required to be issued to the non- petitioners in view of the patent illegality in the impugned order.

2. This petition has been filed against the order dated 22.01.2005 passed by the learned Judge, Family Court No. 2, Jaipur u/s 125 of the Code of Criminal Procedure imposing sentence of imprisonment for 10 months and 24 days on account of non-payment of maintenance allowance to his wife Gunmala.

3. It is contended by learned counsel appearing for the petitioner that the language of Sub-section (3) of the Section 125 of CrPC is quite clear and it circumscribes the power of the Court to impose imprisonment for a term which may extend to one months or until the payment, it sooner made. This power of the Magistrate/Court cannot be enlarged and therefore the only remedy would be after expiry of one months for breach or non-compliance of the order of the Court the wife can approach the Magistrate Court again for similar relief. The Magistrate/Court cannot impose sentence for more than one month. Reliance has been placed on Shahada Khatoon and Ors. Amjad Ali and Ors. 2000(1) Crimes 12 : (RLW 2000(3) SC 414) and Pappu Singh v. Smt. Patang Kaurb 1999(1) RCC 90.

4. I have given my thoughtful consideration to the above submissions made by learned Counsel for the petitioner and have also perused the aforementioned decisions.

5. In *Shahada Khatoon and Ors. v. Amjad Ali and Ors.* (supra), the Apex Court held that the language of Sub-section (3) of Section 125 CrPC is quite clear and the Magistrate cannot impose sentence for more than one month or until payment, if sooner made. The same view has been reiterated by this Court in *Pappu Singh v. Smt. Patang Kaur* (supra).

6. In view of the aforementioned decisions, the impugned order imposing sentence of imprisonment for more than one month deserves to be set-aside.

7. Consequently, this petition is partly allowed and the impugned order dated 22.01.2005 passed by the learned judge, Family Court No. 2, Jaipur imposing sentence of imprisonment for more than one month, is set-aside. The impugned order stands modified accordingly.