



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

**D.B. CRIMINAL REFERENCE NO.2/2020**

In Re A Ref. U/s 395 Cr.P.C. By District And Sessions Judge, Pali.

----Petitioner

Versus

Unknown

----Respondent



Members of the Bar : Mr.Ashok Chhangani.  
Mr.B.S.Sndhu through VC  
Dr.R.D.S.S. Kharlia through VC  
Mr.Gajendra Singh  
Ms.Durga Kanwar Rathore.  
Mr.Amit K. Purohit, through VC  
Mr.Harshit Bhurani.  
Mr.Harshad Bhadu.  
Mr.Vivek Mathur through VC  
Mr.Arpit Gupta through VC.  
Mr.Anil Joshi, GA-cum-AAG (Incharge).

**HON'BLE MR. JUSTICE SANDEEP MEHTA  
HON'BLE MR. JUSTICE MANOJ KUMAR GARG**

**J U D G M E N T**

**Judgment pronounced on :::: 03/12/2021**

**Judgment reserved on :::: 30/07/2021**

**BY THE COURT : (PER HON'BLE MEHTA, J.)**

**Reportable**

**1.** The learned Sessions Judge, Pali has forwarded a reference to this Court under Section 395 Cr.P.C. for answering the following legal questions:

*"(1) WHETHER the Magistrate is precluded to pass a sentence, in an application under section 125(3) Cr.P.C., beyond a period of one month in pursuance of Execution*



*Warrant on a consolidated application made within one year from the date on which the amount became due ?*

*(2) WHETHER the order passed by the Hon'ble Supreme Court in the case of Shahada Khatoon (supra) operates as binding precedent or it qualifies as a mere observation in light of the arguments advanced by the appellant in that case ?*

*(3) WHETHER clarification of the Hon'ble Supreme Court's Order in the case of Shahada Khatoon (supra) by Full Bench of the Kerala High Court in the case of Santosh V State and by the Hon'ble Bombay High Court in Gorakshnath's case (supra) are required to be read in light of the arguments advanced in the said case ?"*

**2.** The matter was registered as D.B. Criminal Reference No.2/2020. This Court, vide order dated 06.01.2021, directed that a notice of the reference be published in the cause list so as to notify the members of the Bar interested to advance submissions on the questions referred to this Court.

In pursuance to the said notice, Sarva Shri Ashok Chhangani, B.S. Sandhu, Dr. RDSS Kharlia, Harshit Bhurani, Harshad Bhadu, Gajendra Singh Rathore, Amit Kumar Purohit, Vivek Mathur, Arpit Gupta and Ms. Durga Kanwar Rathore have appeared to assist the Court on the questions posed/raised by the Referral Court for being answered by virtue of Section 395 Cr.P.C.



The issues involved in the reference revolve around interpretation of Section 125 (3) Cr.P.C. which reads as below:-

**Section 125(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 allowances 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 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.*

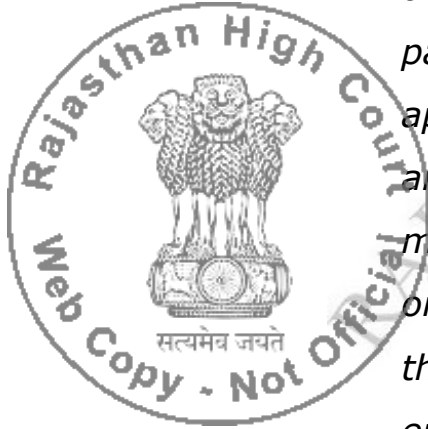
*Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."*

**3.** As the crux of the controversy revolves around the Supreme Court Judgment in the case of **Shahada Khatoon & Ors. vs. Amjad Ali & Ors.** reported in **1999 Crl.L.J. 5060**, it would be



fruitful to reproduce the said Judgment for the sake of ready reference:

*"1. The short question that arises for consideration is whether the learned single Judge of the Patna High Court correctly interpreted Sub-section (3) of Section 125 of the Cr.P.C. by directing that the Magistrate can only sentence for a period of one month or until payment, if sooner made. The learned Counsel for the appellants contends that the liability of the husband arising out of an order passed under Section 125 to make payment of maintenance is a continuing one and on account of non-payment there has been a breach of the order and therefore the Magistrate would be entitled to impose sentence on such a person continuing him in custody until payment is made. We are unable to accept this contention of the learned Counsel for the appellants. 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. 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 can be permitted to impose sentence for more than one month. In that view of the matter the High Court was fully justified in passing the impugned order and we see no infirmity in the said order to be interfered with by this Court. The appeal accordingly fails and is dismissed."*





4. Sarva Shri Ashok Chhangani, B.S. Sandhu, Dr. RDSS Kharlia, Harshit Bhurani, Harshad Bhadu and Ms. Durga Kanwar Rathore argued in favour of the proposition that the powers conferred upon the Court by Section 125(3) Cr.P.C. cannot be circumscribed/ curtailed by the Supreme Court decision in the case of ***Shahada Khatoon (supra)*** and the ratio of the said Judgment has to be considered in context of the peculiar facts which were under consideration before Hon'ble the Supreme Court. They urged that maintenance under Section 125 Cr.P.C. is meant to provide monthly sustenance to the destitute wife, children and parents. Breach of the monthly maintenance order would constitute a separate cause of action for every default and hence, the Court undoubtedly has the power to award to the defaulter, separate imprisonment which may extend to one month or until the payment if sooner made. They contended that the person, in whose favour the order of maintenance is passed (hereinafter referred to as 'the claimant'), has the right to seek enforcement thereof within one year and in such a case, if a composite application is filed by the claimant for recovery of accruing maintenance for a period of 12 months, the Court would be empowered to award separate sentences of upto one month for each breach. They also urged that the Section 125 Cr.P.C. is meant for providing a bare minimum financial support/ stability to the destitute and as such, it needs to be interpreted in a purposive manner. They submitted that even in the case of ***Shahada Khatoon (supra)***, Hon'ble the Supreme Court has observed that for every breach/ non-compliance of the order of Magistrate, the wife can approach the Magistrate again for the similar relief and thus, in case of repeated breaches running upto 12 months, it



would be absolutely justified for the Court to entertain a composite application and to award separate sentences of one month for each default and in that manner, a balanced approach can be struck. In support of their contentions, they placed reliance on the following Judgments:

**(i) Gorakshnath Khandu Bagal vs. State of Maharashtra, 2005 Cr.L.J. 3158;**

**(ii) Badshah vs. Urmila Badshah Godse & Ors., AIR 2014 SC 869;**

**(iii) Shantha & Ors. vs. B.G. Shivananjappa, AIR 2005 SC 2410;**

**(iv) Suo Motu vs. State of Gujarat, 2009 Cr.L.J. 920;**

**(v) Krishena Kumar & Ors. vs. Union of India & Ors., AIR 1990(3) SC 174;**

**(vi) Commissioner of Income Tax vs. M/s. Sun Engineering Works (P) Ltd., AIR 1993 SC 43;**

**(vii) Union of India & Ors. vs. Raghubir Singh (Dead) by LRs & Ors, AIR 1989 SC 1939;**

**(viii) Kuldip Kaur vs. Surinder Singh & Ors., AIR 1989 SC 232;**

**(ix) Shah Faesal & Ors. vs. Union of India & Ors., AIR 2020 SC 3601;**

**(x) State of Gujarat & Ors. vs. Utility Users' Welfare Assn. & Ors., AIR 2018 SC 4215;**

**(xi) State of Uttaranchal vs. Sandeep Kumar Singh & Ors., (2010)12 SCC 794;**

**(xii) The Divisional Controller, KSRTC vs. Mahadeva Shetty & Ors., AIR 2003 SC 4172.**



5. *Per contra*, learned counsel Sarva Shri Gajendra Singh Rathore, Arpit Gupta, Vivek Mathur and Amit Kumar Purohit, vehemently and fervently opposed the above proposition and urged that the view taken by Hon'ble the Supreme Court in the case of ***Shahada Khatoon (supra)*** is a binding precedent and the Court would not be empowered to pass a sentence exceeding one month even if the breach of the maintenance order is repeated over a period of time.

6. We have given our thoughtful consideration to the submissions advanced at Bar, carefully considered the questions framed for answer in this reference and have perused the Judgments cited at Bar.

7. *Firstly*, we consider the plain language of Section 125(3) Cr.P.C. which provides that "if a person ordered to pay maintenance, fails without sufficient cause to comply with the order, the 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....., to imprisonment for a term which may extend to one month or until payment if sooner made." Splitting the provision for better understanding, it becomes clear that it operates in four parts:

- (i) Non-compliance of the order of maintenance by the person directed to pay monthly maintenance,
- (ii) Every breach of the order,
- (iii) Issuance of warrant for levying the amount due in the manner provided for levying fines and



(iv) Sentencing such person **for the whole or any part of each month's allowance**, imprisonment for a term which may extend to one month.

Meaning thereby, if the person ordered to make payment of maintenance fails to do so, the Magistrate shall be empowered to issue warrant for recovery of the maintenance due in the manner provided for levying fines and may also sentence such person for the whole or any part of each month's allowance to imprisonment for a term which may extend to one month. Clearly thus, every single breach of the monthly maintenance order gives rise to a distinct cause of action calling for issuance of a warrant for levying of the amount and a discretion is given to the Magistrate that in the event of non-payment, the person ordered may be sentenced to imprisonment for a term which may extend to one month for each month's default. The clear intention of the legislature is that as the order of maintenance is stipulated to provide maintenance on a monthly basis, every breach thereof is an infringement for which a separate warrant for levying fine is to be issued and in addition thereto, the person so ordered can be sentenced to imprisonment for a term which may extend to one month concurring with every breach. The application for recovery of the maintenance amount can be filed within a period of 12 months from the date it becomes due. The section does not provide that the claimant must file separate applications for recovery of each month's allowance.

**8.** We have given our respectful consideration to the judgments cited by learned counsel Sarva Shri Gajendra Singh Rathore, Arpit Gupta, Vivek Mathur and Amit Kumar Purohit who have argued





against the preposition and find that in all of these cases, the view which was taken by the Court was that only a sentence of one month's imprisonment can be passed for the default arising from non-payment of every month's maintenance. The said view is otherwise also in accordance with the specific language of Section 125(3) Cr.P.C. However, in none of these judgments, has it been stipulated that the Magistrate/Court cannot entertain a consolidated application for multiple defaults or that separate sentences of imprisonment cannot be passed on the basis of a single application for recovery of multiple monthly installments of maintenance.



9. In the case of ***Shantha @ Ushadevi & Ors. vs. B.G. Shivananjappa***, reported in ***AIR 2005 SC 2410***, Hon'ble the Supreme Court approved the concept of continuing application for recovery observing:

"It is true that the amount of maintenance became due by virtue of the Magistrate's order passed on 20th January, 1993 and in order to seek recovery of the amount due by issuance of warrant, application shall be made within a period of one year from the date the amount became due. In the present case, the application, namely, Crl. Misc. Petition No. 47 of 1993 was filed well within one year. As no amount was paid even after the disposal of the matter by the High Court, the appellant filed I.A. 1 in Crl. Misc. Petition No. 47 of 1993 wherein the arrears due up to that date were calculated and sought recovery of that amount under [Section 125 \(3\)](#). Thus, I.A. 1 was filed even when Crl. Misc. Petition 47 of 1993 was pending and no action to issue warrant was taken in that proceeding. Crl. Misc. Petition of 47 of 1993 which was filed within one year from the date the amount became due was kept alive and it was pending althrough. The purpose of filing I.A. on 1st September, 1998 was only to mention the amount due upto date. The fact that the additional amount was specified in the I.A. does not mean that the application for execution of the order by issuing a warrant under Section 125(3) was a fresh application made for the first time. As already noticed, the main petition filed in the year 1993 was pending and kept alive and the filing of



subsequent I.A. in 1998 was only to specify the exact amount which accrued due upto that date. Such application is only supplementary or incidental to the petition already filed in 1993 admittedly within the period of limitation. The fact that only a sum of Rs. 5,365/- representing the arrears of eight months was mentioned therein does not curtail the scope of Crl. Misc. Petition filed in 1993 more so when no action was taken thereon and it remained pending.”

Thus, it is clear that the application for recovery of maintenance once filed by the claimant, would definitely remain alive and pending for maintenance of 12 months.

The contention of the learned counsel, who have argued against the proposition, is absolutely untenable because even in **Shahada Khatoon (supra)** all that has been laid down is that the Magistrate has no power to impose sentence beyond one month for one default. However, in cases of multiple defaults, it has been clearly stipulated that for the next default, the wife can approach the Magistrate again for similar relief. However, the said Judgment does not set out any straight jacket formula that the wife cannot file a consolidated application for default of 12 months which, in our view, is permissible as per the proviso to Section 125 (3) Cr.P.C. and the Judgment in the case of **Shahada Khatoon (supra)**.

Therefore, we have no hesitation in holding that where the defaulter repeatedly breaches the order of maintenance under Section 125 Cr.P.C., the Court would be acting well within its jurisdiction by issuing separate warrants for recovery of each month's dues and sentence the defaulter to separate terms of imprisonment of upto one month each for every month's default. The only restriction would be that the recovery application shall not be entertained for dues beyond previous 12 months.



10. We are in total conformity with the view taken by Hon'ble the Larger Bench of the Gujarat High Court in the case of ***Suo Motu vs. State of Gujarat*** reported in ***2009 Cri.L.J. 920*** wherein, it was held as below:-

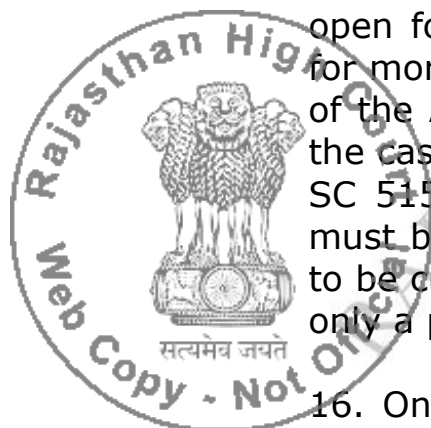
"14. Subsection (1) of section 125 thus provides for monthly allowance to be paid to the wife, children, mother or father, as the case may be, at such monthly rate as the Magistrate thinks fit. It can thus be seen that the maintenance that the Magistrate awards under section 125(1) becomes payable every month.

Subsection (3) of section 125 provides for summary procedure for recovery of such maintenance allowance so fixed by the Magistrate, if any person so ordered fails without sufficient cause to comply with the order. It is provided that in such a case, for every breach of the order, the Magistrate may issue 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 including interim maintenance remaining unpaid to imprisonment for a term which may extend to one month or until payment if sooner made. Subsection (3) of section 125 thus empowers the Magistrate to award sentence upto one month for the whole or part of each month's allowance remaining unpaid. Limitation on the power of the Magistrate to impose imprisonment for a term not exceeding one month, therefore, has to be viewed in the background of the purpose for which such imprisonment is provided. As already noticed, section 125(1) refers to monthly allowance to be fixed by the Magistrate for maintenance of wife, child, father or mother on such monthly rate as the Magistrate thinks fit. Upon failure of a person to comply with such an order, it is open for the Magistrate for every breach of the order to issue warrant for levying the amount due and further to sentence such a person for the whole or any part of each month's allowance remaining unpaid to imprisonment for a term which may extend to one month. To our mind, therefore, the Legislature never intended that regardless of the extent of the default on the part of the husband, the Magistrate can impose sentence only upto one month. True interpretation of section 125(3), in our view, would be that for each month of default in payment of maintenance, it is open for the Magistrate to sentence the defaulting person to imprisonment for a period of one month or until payment if sooner made.

15. The question can be looked from a slightly different angle. If for each month of default of payment of maintenance, the wife were to file separate applications before the Magistrate, surely, it would be open for the Magistrate to pass separate orders of sentences each not



exceeding one month. If that be so, would it not be open for the wife to file one consolidated application for every month's default instead of filing separate application for each month of arrears and in such a situation, would it not be open for the Magistrate to pass one consolidated order of sentence upto a maximum one month for each month of default in payment of maintenance ? The answer obviously is in the affirmative as long as the application is made by the wife within one year from the date on which the amount has become due as provided under subsection (3) of section 125. To our mind, the Apex Court in the case of Shahada Khatoon did not lay down that for every month's default, it is not open for the Magistrate to sentence the defaulting husband for more than one month. It is well settled that the decisions of the Apex Court are not to be interpreted like statutes. In the case of **P.S.Sathappan v. Andhra Bank Ltd.**, AIR 2004 SC 5152, it was held that judgment of the Supreme Court must be read as a whole and the ratio therefrom is required to be culled out from reading the same in its entirety and not only a part of it.



16. One may notice that the provision of section 125(3) of the Criminal Procedure Code insofar as the same is relevant for our purpose is similar to subsection (3) of section 488 of the Criminal Procedure Code of 1882 which read as follows:

"The Magistrate may, for every breach of the order issue a warrant for levying the amount due in the manner hereinbefore 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."

Criminal Procedure Code 1882 replaced the old Criminal Procedure Code 1861. Similar provisions were made in section 316 of the Code of 1861. However, there were certain significant differences Section 316 of the Code of 1861 read as follows:

"The Magistrate may, for every breach of the order by warrant, direct the amount due to be levied in the manner provided for levying fines; or may order such person to be imprisoned with or without hard labour for any term not exceeding one month."

Comparing the two provisions, it can be seen that in section 488 of the Code of 1882, the Legislature added the words : **"may sentence such person for the whole or any part of each month's allowance remaining unpaid"**. Addition of words **"of each month's allowance"** are significant. Earlier provisions of section 316 of the Code of 1861 could have been interpreted as providing for the limitation on the power of the Magistrate to impose sentence for a term not exceeding one month regardless of the extent of the default.



However, the Legislature made the position clear in the later enactment by adding words “**each month's allowance**”. Modification in the provision was thus to remove a possible confusion. While understanding the existing provisions of section 125(3) which are in pari materia to section 488(3) of the Code of 1882, this important aspect has to be borne in mind. It may be noted that in the Criminal Procedure Code of 1898, these provisions were retained in same terms as in the Code of 1882.

17. From the decision of the Apex Court in the case of Shahada Khatoon, it can be seen that it was a case wherein on behalf of the wife, it was contended that liability of husband arising out of the order passed under section 125 to make payment of maintenance is a continuing one and on account of nonpayment, there has been breach of the order and it would, therefore, be open for the Magistrate to impose sentence on such a person continuing him in custody until payment is made. It was in this background that the Apex Court observed that language of subsection (3) of section 125 circumscribes the powers of the Magistrate to impose imprisonment for a period which may extend to one month or until the payment if sooner made. In the said decision, the Hon'ble Supreme Court did not lay down the proposition that under subsection (3) of section 125 of the Criminal Procedure Code, it is not open for the Magistrate to pass a consolidated order of sentencing the defaulting husband in excess of one month for several months of defaults.

18. We may now have a look at the judicial trend in different High Courts. As noted, almost unanimous view of all High Courts before the decision of Shahada Khatoon was that it is open for the Magistrate to award sentence in excess of one month in case of several months of default.

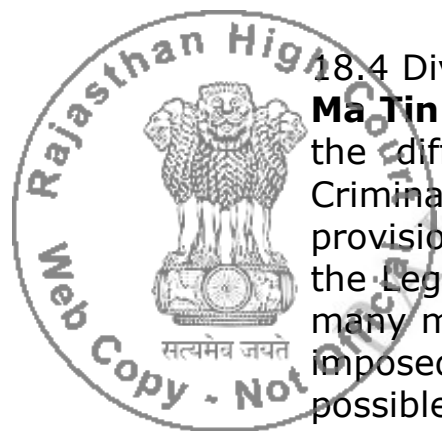
18.1 Learned single Judge of the Lahore High Court in AIR 1919 Lahore 197 while interpreting pari materia provisions of section 488 (3) of the Criminal Procedure Code of 1898 upheld the sentence of six months imposed on a husband for several months of default. Contention that cumulative warrant for the whole arrears and cumulative sentence of six months was illegal was turned down.

18.2 Once again learned single Judge of the Lahore High Court in the case of **Emperor v. Sardar Muhammad**, AIR 1935 Lahore 758 observed that the husband can be committed to prison for a term amounting to whole or any part of each month's allowance remaining unpaid, after execution of the warrant. In that case, finding that six months' allowance was outstanding, it was observed that he could be committed to prison for six months.

18.3 Full Bench of the Allahabad High Court in the case of **Emperor v. Beni**, AIR 1938 Allahabad 386 held as follows:



"We are satisfied after a consideration of the terms of the section that the intention of the Legislature was to empower the Magistrate after execution of one warrant only to sentence a person, who has defaulted in the payment of maintenance ordered under S.488, Criminal P.C., to imprisonment for a period of one month in respect of each month's default and that the section does not enjoin that there should be a separate warrant in respect of each term of imprisonment for one month. In other words, where arrears have been allowed to accumulate, the Court can issue one warrant and impose a cumulative sentence of imprisonment."



18.4 Division Bench of the Rangoon High Court in the case of **Ma Tin Tin v. Maung Aye**, AIR 1941 Rangoon 135, noticing the difference in language used in section 488 of the Criminal Procedure Code of 1882 replacing the earlier provisions of section 316 of the Code of 1861, observed that the Legislature introduced words capable of meaning that as many months' imprisonment as there were defaults could be imposed and by that the Legislature meant to remedy the possible defect in the existing law and that the Court should construe the Act as to make that remedy effective. Consequently, the Bench upheld the power of the Magistrate to impose sentence in excess of one month for arrears exceeding a month.

18.5 Learned single Judge of the Nagpur High Court in the case of **Emperor v. Budhoo Mandal**, AIR 1949 Nagpur 269 held that one month's imprisonment is not the maximum sentence that can be awarded by the Magistrate and where more than one month's maintenance allowance remains unpaid, imprisonment for more than one month can be awarded by the Magistrate.

18.6 Full Bench of the Bombay High Court in the case of **Karsan Ramji Chawda v. State of Bombay**, AIR 1958 Bombay 99, held that the power of the Magistrate is in respect of whole or part of each month's allowance remaining unpaid to sentence the person for a term not exceeding one month.

18.7 Learned single Judge of the Mysore High Court in the case of **Kantappa v. Sharanamma**, AIR 1967 Mysore 81, held that the Magistrate cannot direct the defaulting husband to imprisonment for an unspecified period. The Magistrate has to compute the term of imprisonment with reference to each month's imprisonment and then pass a cumulative sentence.

18.8 Division Bench of the Calcutta High Court in the case of **Moddari Bin v. Sukdeo Bin**, AIR 1967 Calcutta 186, held that maximum of one month of sentence that the Magistrate can impose is relatable to the period of arrears of one month. In other words, default of one month is punishable



by one month's imprisonment and no more. If the default is more than one month then the imprisonment can be for as many months subject to maximum of 12 months.

18.9 Learned single Judge of the Andhra Pradesh High Court in the case of **G. Pratap Reddy v. G.Vijayalakshmi**, 1982 Cr.L.J. 2365 held that the Magistrate can pass sentence upto one month for each month's unpaid allowance.

18.10 Similar view was taken by the Rajasthan High Court in the case of **Kashmir Singh v. Kartar Kaur**, 1988(2) Crimes 33.

18.11 Learned single Judge of the Orissa High Court in the case of **Bhaktla Bhuyan v. Smt. Savitri Bhuyan**, 1991(1)Crimes 563 observed that subsection (3) of section 125 confers independent powers on the Magistrate to issue warrant and to sentence a person to imprisonment. It was further held that issuance of warrant is not a condition precedent to the jurisdiction of the Magistrate to sentence the husband.

19. On the other hand, after the decision of the Apex Court in the case of Shahada Khatoon, different High Courts have viewed the situation differently.

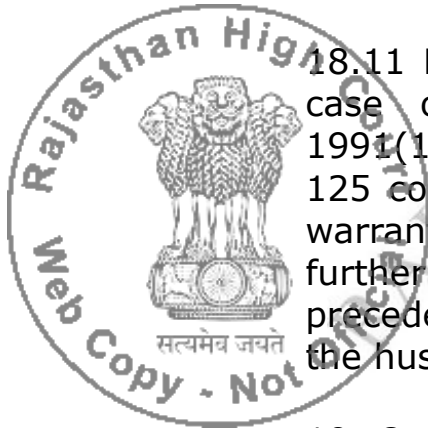
19.1 Learned single Judge of the Bombay High Court in the case of **Sanjay Sakharam Dongare v. Jyoti Sanjay Dongare**, 2003 Lawsuit (Bom) 670, following the decision in the case of Shahada Khatoon, found that the Magistrate could not have awarded punishment for a period of 12 months at a time.

19.2 Learned single Judge of the Andhra Pradesh High Court in the case reported in 2004 Cri. L.M. 1280 opined that detention and imprisonment for failure of the husband to pay maintenance cannot exceed one month.

19.3 Learned single Judge of the Madras High Court in the case of **Mahboob Basha v. Nannima @ Hajara Bibi**, 2004 Lawsuit (Mad) 1425, while setting aside the order of sentence provided that the Chief Judicial Magistrate would be at liberty to pass fresh order once the wife approaches for noncompliance of the maintenance order, but not more than a month on each occasion.

19.4 Learned single Judge of the Calcutta High Court in the case of in Re: Md. Jahangir, 2005 Cri. L.J. 237, set aside the order passed by the Magistrate awarding sentence in excess of one month relying on the decision of Shahada Khatoon.

19.5 Learned single Judge of the Rajasthan High Court in the case of **Sunil Kumar Jain v. State**, 2005 Lawsuit (Raj) 498, also adopted a similar view.





19.6 Learned single Judge of the Bombay High Court in the case of **Rajesh Bhiwaji Nande v. State of Maharashtra**, 2005 Lawsuit (Bom) 610 was dealing with a case where the wife had filed applications from time to time for recovery of maintenance which had remained unpaid. In that background, learned Judge observed that the Magistrate was justified in directing that the husband shall suffer imprisonment of one month at each time.

19.7 Learned single Judge of the Kerala High Court in the case of **Sundaran v. Sumathi**, 2006 (4) Crimes 471 held that for every month of default, it is open for the Magistrate to sentence the husband upto a maximum of one month of imprisonment.

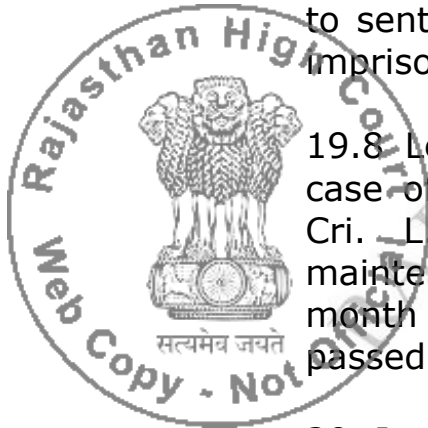
19.8 Learned single Judge of Allahabad High Court in the case of **Dilip Kumar v. Family Court, Gorakhpur**, 2000 Cri. L.J. 3893 held that for default of payment of maintenance, confinement can be only for a period of one month and no composite order for confinement can be passed.

20. It can thus be seen that prior to the decision of the Apex Court in Shahada Khatoon's case, almost unanimously different High Courts of the country had held that limitation on power of the Magistrate to impose sentence upto a maximum of one month is relatable to each month of default in payment of maintenance and that subject to the limitation prescribed in proviso to subsection (3) of section 125, it is open for the Magistrate to impose sentence upto a maximum of one month for each month of default and that a composite order of this nature can be passed by the Magistrate. It was only after the Apex Court decided the case of Shahada Khatoon that various High Courts have taken somewhat different view.

21. For the reasons already stated, we find that the Supreme Court in Shahada Khatoon's case did not lay down the ratio that regardless of the extent of default on the part of the husband in paying maintenance, the Magistrate can impose imprisonment of maximum of one month. We are in respectful disagreement with the view expressed by some of the High Courts to the contrary.

22. In the result, question is answered in following terms:

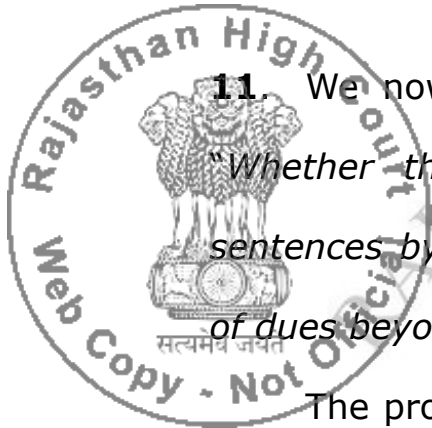
“Magistrate in exercise of powers under section 125 of the Criminal Procedure Code is empowered to sentence a defaulting person for a term upto one month (or until payment if sooner made) for each month of default subject of course to the limitation provided in proviso to subsection (3) of section 125. In other words, it is open for the Magistrate to award sentence upto a maximum of one month for each month of default committed by the person ordered to pay maintenance







and the maximum limit of sentence of one month referred to in subsection (3) of section 125 will be applicable for each month of default. Magistrate can entertain separate applications from the person entitled to receive such maintenance or even entertain a common application for several months of default and pass appropriate order and, if found necessary, sentence a defaulting person upto a maximum one month for each month of default. In all such cases, however, period of limitation provided in subsection (3) of section 125 shall have to be borne in mind."



**11.** We now proceed to deal with the ancillary question i.e., *"Whether the Magistrate is precluded from passing multiple sentences by entertaining a consolidated application for recovery of dues beyond one month."*

The proviso to Section 125(3) Cr.P.C. reads that "no warrant shall be issued for the recovery of any amount due under this Section unless the application be made to the Court to levy such amount within a period of one year from the date on which it became due. Thus, the proviso stipulates that an application has to be filed to the Court to levy the amount due and that such application should be made within a period of one year from the date on which the amount becomes due. The legislature has made it clear that even though the maintenance, which is awarded under Section 125 Cr.P.C., is recurring every month, an option has been given to the claimant to file an application for the recovery of the amount within a period of one year from the date on which it becomes due. There is no requirement in law that a separate application should be filed for every month's maintenance. Thus, there is no doubt in the mind of this Court that the claimant/claimants can file a consolidated application for levying the amount due for the period of preceding 12 months and there is no impediment there against. A consolidated application would



rather facilitate the procedural wrangles for the claimant and also, ease the burden on the Courts. Dealing with separate applications for each month's default/dues would unnecessarily complicate the issues because it would require repetition of the entire procedure right from the issuance of recovery warrants against the defaulter for each month's allowance and to wait for service thereof.

Without any doubt, for defaults of 12 previous months, the Court may simultaneously issue separate warrants for levying every month's due amount and if, despite service, the defaulter fails to make the payment, then separate sentences of imprisonment upto one month may be passed for every month's default. Needless to say, the sentences would have to be passed by maintaining the sequence in the descending order of defaults limited upto previous 12 months.

**12.** We therefore answer the reference in the following manner:-

(I) That the claimant/claimants would be entitled to file a consolidated application for recovery of previous 12 months dues. The consolidated application shall be treated as 12 individual claims for recovery of monthly allowances of previous 12 months.

(II) That the Court will deal with the application in 12 separate compartments and shall issue separate warrants of recovery of every month's dues, subject to the condition that the application shall not be entertained for maintenance dues beyond a period of 12 months. In the event of non-payment/non-recovery of the maintenance, the Court may



pass separate sentences upon the defaulter extending to one month's imprisonment for each default;

(III) We also clarify that in cases where, no order of interim maintenance has been passed and the Court, while finally deciding the application for maintenance, orders that the maintenance shall be payable from the date of filing of the application, the claimant may file an application for recovery of the accrued amount and such application shall be considered to be within time if filed within 12 months from the date of the order.



**12.** Before concluding the matter, we would like to observe that considering the plain language of Section 125(3) Cr.P.C., manifestly, an application for recoveries cannot be made for a period of more than one year's arrears. However, we are of the considered view that language of this Section is very restrictive and complicates the procedure of recovery of maintenance putting the destitute claimants to face unnecessary hurdles and undergo a cumbersome procedure of filing fresh applications, getting the notices thereof served upon the defaulter and thereby delaying the process of recovery.

We therefore strongly feel that the appropriate Government should consider suitable amendments in Section 125 Cr.P.C. so that the procedure of recovery can be simplified.

In the meantime, as an interim measure and in order to simplify the procedure and to avoid unnecessary delays, we hereby direct all the Magistrates/ Family Courts across the State of Rajasthan seized of the applications under Section 125 Cr.P.C.,



that after passing of the order, the Court shall facilitate the claimant to move an application for recovery of maintenance amount on the same day when the application is decided. The notice of the application shall be served on the defaulter on the date of the decision and consequently, he/she shall be under an obligation to deposit the maintenance amount by the particular date to be stipulated failing which, the Court may initiate the procedure of recovery in terms of Section 125(3) Cr.P.C.

The reference is answered accordingly.



**(MANOJ KUMAR GARG),J**

**(SANDEEP MEHTA),J**

2- tikam daiya/-



सत्यमेव जयते