

**MR Ex. 09 of 2020(Reg no 05/20)**

**Order no 30**

**Dated 15.12.2023**

Today is fixed for production of the OP and further payment. The OP is produced before me and he is asked on dock whether he shall make payment but he replied that he will not pay a single farthing as the petitioner is not residing with him and so he claims that he is not liable to maintain the petitioner. The petitioner namely, Budhiran Nechha is present through advocate and through her advocate she claims that she is not getting any maintenance from her husband. The OP refuses to give any undertaking to make payment in any future date. On perusal of the record it appears that the OP did not make any payment of maintenance to the petitioner as like this case several other execution cases has been filed by the petitioner against the OP which all are pending and no payment has been made by the OP.

It must be borne in mind that section 125CrPC is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the destitute wife. It is unreasonable to insist on filing successive applications for issuance of DW and WA when the liability to pay the maintenance as per order passed u/s 125(1) of CrPC is a continuing liability. As per the letter and spirit of section 125(3)CrPC and the citations so reported in 1999 SCC CrL 1029, 2005(4) SCC 468, 1989(1) SCC 405 and the decision so given by the Hon'ble High Court Calcutta in CRR No. 1600/08(Tapan Chatterjee vs Shila Chatterjee), it is of course a fact that a Magistrate cannot detain and OP for more than a month at a time but then it is also apparent and clear from the letter and spirit of the said section and the citations that if the wife approaches the Magistrate again on the expiry of one month for non payment of any amount of maintenance or non giving of any undertaking to pay the amount due, the Magistrate can again sentence of OP to undergo simple imprisonment for one month. It is not the spirit of law that the OP husband will not give any amount of maintenance to the petitioner wife and after undergoing SI of one month will go scot free and again the petitioner will have to go through the torrid procedure and ordeal of filing petition for DW and warrant of arrest.

It be mentioned here that u/s 125(3) CrPC the procedure that has been enumerated regarding levying amount due would be in the manner provided for levying fines. Section 66 of IPC said that imprisonment that a court can impose in default of fine may be of any description. Section 67 of IPC is not applicable to section 125(3) CrPC as section 125(3) CrPC is not related to any offence and the OP of a misc. Case is not an offender.

So the statement of the OP that he would not pay any single farthing and or would not give any undertaking to pay the same which he stated on being

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asked and the above analogy of the relevant provisions of the statute makes it quite justified to sentence the OP to undergo rigorous imprisonment for one month again that is **15.01.24** or till payment if sooner made.

The statement of the OP that he would not pay any single farthing and or would not give any undertaking to pay the same mix it quite justify to sentence the OP to undergo rigorous imprisonment for one month that is up to **15.01.24** or until further payment of the full amount of this execution case if earlier made. Be it also mentioned here that the order as regards rigorous imprisonment is not a bar in a case u/s 125(3) of CRPC and the same has been observed by Hon'ble High Court at Calcutta **In Moddari Bin vs Sukdeo Bin, AIR 1967 Calcutta 136.**

Controller Superintendent, Balurghat Correctional Home is directed to take necessary steps so that the wages so earn by the OP from the rigorous imprisonment so imposed, be disbursed to the petitioner namely Budhiran Nechha on account of maintenance due. The amount so disbursed to the petitioner would be adjusted with the maintenance amount so due. The petitioner is at liberty to take necessary steps for withdrawing the said money.

Issue jail warrant.

Fix **11.01.24** for production of the OP and further payment.

D/C by me

ACJM  
Gangarampur at Buniadpur  
Dakshin Dinajpur  
JO Code WB00990