

Misc Execution No. 343 of 2023
TR – 161 / 23

Order dated 27.01.2025

Today is fixed for passing order.

Both the parties are present by filing hazira.

The petitioner files a petition on 06.05.2023 for putting in execution the order of grant of interim maintenance amount in his favour of the petitioner as passed by this Court vide order dt. 20.01.2023 in C/W Misc Case No. 107/22.

The OP willingly evaded the payment of arrear interim maintenance amount for the period February 2022 to April 2023, and repaid only Rs.14000/- amongst the entire arrear amount of interim maintenance i.e. for only 02 months out of Rs.105000/-, for willful evasion of payment of arrear interim maintenance by the OP, W/A was issued as against him in C/W, this case for execution of the arrear interim maintenance amount and later the OP was brought under arrest on strength of W/A on 30.12.2024 and was remanded to J.C., for 30 days i.e. up till 29.01.2025.

The OP had suffered imprisonment for last 30 days for default of payment of 1 month (April 2022) of arrear interim maintenance.

The petitioner hereby submits that since then the OP had not made any further payment of arrear interim maintenance to the petitioner.

For this reason the petitioner prays for execution of the period of detention of the OP in jail custody for further 30 days since 29.01.2025 for default of payment of one month (May 2022) of arrear interim maintenance.

Hence the petitioner prayed for accepting the petition and upon hearing be pleased to allow the execution of the period of detention of the OP in jail custody for further 30 days since 29.01.2025 for default of payment of one month (May 2022) of arrear interim maintenance, for the ends of justice.

Section 125(3) Cr.P.C. reveals that, ***“If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, any may sentence such person, for the whole or any part of each month’s allowance for the maintenance or the interim maintenance and express 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 or 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, if shall be considered to be just ground for his wife's refusal to live with him."

PATTANAIAK AND M.B. SHAH, JJ.

Criminal Appeal No. 83 of 1996, D/- 7-4-1999.

Shahada Khatoon and others, Appellants v. Amjad Ali and others, Respondents.

Criminal P.C. (2 of 1974), S. 125(3) – Maintenance – Non-payment of by husband –

Magistrate can only sentence him for a period of one month or until payment, if sooner made of one month or until payment, if sooner made – Power to impose sentence cannot be enlarged – Magistrate cannot impose sentence continuing him in custody until payment is made – for breach of order wife can approach Magistrate again for similar relief.

ORDER :- The short question that arises for consideration is whether the Ld. Single Judge of the Patna High Court correctly interpreted sub Section (3) of S. 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 Ld. 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 S.125 is quite clear and it circumscribes the 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 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.

Hence it appears from the above discussion that inspite of the fact that there is arrear of interim maintenance remaining unpaid by the OP but the OP cannot be detained for more than one month for the same and hence the petition filed by the OP is not maintainable as per law and stands rejected.

Hence, it is,

Ordered

That the petition dt. 14.01.2025 filed by the OP stands rejected.

To 28.02.2025 for payment.

D & C by me.

Keya Sarkar

**(JO Code WB01123)
4th JM, Howrah**

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