

Shahada Khatoon And Ors. vs Amjad Ali And Ors. on 7 April, 1999

Equivalent citations: 2000(1)ALD(CRI)305, 1999CRILJ5060, I(2000)DMC313SC, JT1999(10)SC260, 2000(1)KLT696(SC), 2000(2)MPHT1, 1999(2)MPLJ448, 1999(II)OLR(SC)333, (1999)5SCC672

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Bench: M.B. Shah

ORDER

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.