

1948

Present : Dias and Gratiaen JJ.

MARIKKAR, Appellant, and HABEEBA UMMA, Respondent

*S. C. 210—D. C. Puttalam, 5,026**Muslim Marriage Ordinance—Award of mahr by Kathi—Machinery to enforce award—Regular action not available—Remedy given by Ordinance—Chapter 99—Section 21 (1) (a) and 21 (4).*

An award of *mahr* by a Kathi under section 21 (1) (a) of the Muslim Marriage and Divorce Ordinance can be enforced only as provided by section 21 (4) of the Ordinance. A regular action cannot be brought to recover the amount of the award.

APPEAL from a judgment of the District Judge, Puttalam.

M. I. M. Haniffa, with *Naina Marikar*, for defendant appellant.

G. E. Chitty, with *N. Nadarasa*, for plaintiff respondent.

Cur. adv. vult.

December 20, 1948. GRATIEN J.—

The parties to this action are Muslims, and were married on December 24, 1943. The husband, who is the appellant, had admittedly not fulfilled his promise to pay to his wife a sum of Rs. 1,000 as *mahr*, and in October, 1944, she claimed the recovery of this sum from the appellant in the Kathi's Court of Puttalam. In view of the sum involved, the Kathi's Court undoubtedly had jurisdiction in the matter by virtue of section 21 (1) (a) of the Muslim Marriage and Divorce Registration Ordinance (Chapter 99). In due course the appellant was ordered to pay Rs. 1,000 to his wife, the respondent, as prayed for by her; but so far he has successfully evaded payment without making the slightest attempt to justify his default.

This appeal relates to the machinery available to the respondent for the purpose of enforcing the award in her favour. Section 21 (4) of the Ordinance provides that any sum awarded by the Kathi in respect of a claim upon which he is empowered to adjudicate "*may be recovered as though it were a fine imposed under the Ordinance on application made to the Magistrate*". In accordance with the procedure laid down, the application requires to be supported by a certificate under the Kathi's hand specifying the amount recoverable. The section also states, out of an abundance of caution, that the Magistrate's powers in the matter shall not be restricted to the recovery of amounts which he is competent, *qua* Magistrate, to impose by way of fine. All sums recovered by the Magistrate are remitted to the Kathi's Court for payment in due course to the person thereto entitled.

The machinery laid down by section 21 (4) of the Ordinance is clearly exhaustive of the remedies available for the enforcement of awards made by a Kathi's Court in respect of claims for the payment of *mahr*. In the present action the respondent did in fact attempt to avail herself of that remedy in the Magistrate's Court of Puttalam, but she apparently became discouraged by the completely negative results achieved in that Court. She has therefore sought to avail herself of some other machinery (operating either concurrently with or alternatively to that prescribed by the Ordinance) in her efforts to compel the appellant to honour his obligations. She sued the appellant in a regular action, with which we are now concerned, in the District Court of Puttalam to enforce the award of the Kathi's Court. I think that the respondent's rights are restricted to the procedure laid down by section 21 (4). The remedy of enforcing by regular action in one tribunal the awards or decrees of another tribunal are confined to very special instances such as arise for example in the case of foreign judgments and the awards of arbitrators. The District Courts of the Island cannot be regarded as courts of execution in respect of the decisions of a Kathi's Court unless there is some express statutory provision to that effect. Least of all can they be so regarded when, as in the present case, some other tribunal has been specially selected by the Legislature for the purpose.

The learned District Judge has, in my opinion, wrongly rejected the preliminary issue of law raised by the appellant with regard to the

maintainability of the action. I agree with him that the *proviso* to section 21 (4) which empowers a Magistrate to commit a person to prison for non-compliance with a Kathi's Order for the *payment of maintenance* has not (and advisedly not in my opinion) been extended to cases where the order is made in respect of *mahr*, but I do not see how that circumstance can affect the present question. The primary purpose of section 21 (4) is not to punish a person affected by a Kathi's order but to provide a convenient and speedy means of recovering sums awarded by him, and the provisions of the Criminal Procedure Code which deal with the recovery of fines are by no means limited to the weapon of incarceration. Besides, the appellant's obligation in the present action merely represents a civil debt which for purposes of convenience has been made "*recoverable as though it were a fine*". The theory of punishment does not seem to intrude upon the problem at all.

In my opinion the respondent's remedy is misconceived and her present action cannot be maintained. On the other hand, the appellant's conduct disentitles him to the slightest sympathy, and I would make order that the respondent's action should be dismissed, but without costs in either Court.

DIAS J.—I agree.

Appeal allowed.

