

1944

Present: Howard C.J.

SARANA, Appellant, and HEEN UKKU, Respondent.

113—*M. C. Kandy, 10,285.*

*Kandyan Marriage Ordinance (Cap. 96), section 20, sub-section 2 (b) and (6)—
Marriage dissolved—Husband ordered to pay maintenance to wife—
Power of Magistrate's Court to enhance maintenance.*

Where a Kandyan marriage was dissolved by the Provincial Registrar, acting under the provisions of section 20 of the Kandyan Marriage Ordinance, and the husband was ordered to pay the wife a sum of two rupees as maintenance,—

Held, that on an application for an enforcement of the order under section 20, sub-section (6), it was competent for the Magistrate's Court to enhance the sum awarded by way of maintenance.

A PPEAL from an order of the Magistrate of Kandy.

E. A. G. de Silva, for appellant.

No appearance for respondent.

Cur. adv. vult.

March 22, 1944. HOWARD C.J.—

This is an appeal from an order of the Magistrate's Court, Kandy, directing the appellant to pay a sum of Rs. 4 per month for the maintenance of the respondent. The marriage of the appellant and the respondent was dissolved on October 6, 1942, by the Provincial Registrar acting under the provisions of section 20 of the Kandyan Marriage Ordinance (Cap. 96). Under section 20 (2) (b), the appellant was ordered by the Provincial

Registrar to pay monthly a sum of Rs. 2 to the respondent for her maintenance. On May 28, 1943, the respondent applied to the Magistrate's Court, Kandy, for the enforcement of the order of the Provincial Registrar under section 20 (6). On November 19, 1943, a motion was filed asking for the enhancement of the rate of maintenance. On December 10, 1943, the Magistrate, Kandy, after hearing evidence, directed the appellant to pay maintenance to the respondent at the rate of Rs. 4 per month, commencing from December 31, 1943. It is contended that the Magistrate had no power to vary the order of the Provincial Registrar. Sub-sections (5) and (6) (a) of section 20 of (Cap. 96) are worded as follows:—

“ (5) An entry or order made under sub-section (2), (3) or (4) hereof shall have all the effect of an order or decree of a competent Court in so far as it may be enforced, cancelled, or varied by such Court, to all intents and purposes as if the entry or order were an order or decree of such Court, but subject to the limitations hereinafter mentioned.

(6) For the purposes of the immediately preceding sub-section ‘competent court’ shall mean—

(a) a Magistrate's Court in the exercise of its jurisdiction under the Maintenance Ordinance, in respect of an order made under section 2 thereof, where such entry or order directs the payment periodically of a sum of money in so far as such entry or order directs such payment:

Provided that an entry or order in favour of the woman divorced shall be cancelled only upon proof that she has been habitually cohabiting with any man since the date of such order.”

It would appear, therefore, as if a Magistrate's Court had *prima facie* jurisdiction to enforce and vary an order of the Provincial Registrar. It is urged, however, that, after the dissolution of a marriage, a Magistrate's Court has no power under section 2 of the Maintenance Ordinance (Cap. 76) to direct the payment of any sum of money. In support of this contention I was referred to the judgment of de Kretser J., in *Meniki v. Siyathuwa*¹. In this case the appellant obtained an order for maintenance against her husband, the respondent. Thereafter the parties were divorced under the Kandyan Marriage Ordinance. But the order of dissolution of the marriage was not accompanied by any order for the payment of periodical sums of money. It was held that a subsequent application by the respondent for arrears of maintenance could not be maintained as the relationship between the parties was no longer that of husband and wife. In coming to this decision de Kretser J. followed various Indian cases interpreting provisions of the Indian Criminal Procedure Code corresponding to the provisions of the Maintenance Ordinance (Cap. 76). In my opinion *Meniki v. Siyathuwa* has no application inasmuch as in the present case the Provincial Registrar has made, as he was empowered to do, an order for monthly payment under section 20 (2) (b) of Cap. 96 and specific provision for the enforcement and variation of such an order is made by sub-section (5). In considering the limitations on the powers

¹ 42 N. L. R. 53.

exercisable by the Magistrate under section 2 of the Maintenance Ordinance I think the proper interpretation to be given to section 20 of Cap. 96 is that the Magistrate can exercise his powers with regard to maintenance in the case of a marriage dissolved under Cap. 96, as if the parties were husband and wife. In my opinion the Magistrate came to a right conclusion and the appeal is dismissed. There will be no order as to costs.

Appeal dismissed.
