

1957

Present : T. S. Fernando, J.

L. SIRIWARDANA, Appellant, and D. EMALIN, Respondent

*S. C. 564—M. C. Gampaha, 36,344**Maintenance—Arrears due—Maximum term of imprisonment that may be imposed on defendant—Criminal Procedure Code, s. 312—Maintenance Ordinance, s. 8.*

Where a person who is ordered to pay maintenance is in arrears for more than six months, the Magistrate has jurisdiction to sentence him to imprisonment for a term which may exceed six months. In such a case, the maximum term of imprisonment is determined by section 8 of the Maintenance Ordinance and not by section 312 of the Criminal Procedure Code.

APPPEAL from an order of the Magistrate's Court, Gampaha.

In this case the defendant, who had been ordered to pay maintenance, was in arrears for 6 years. The learned Magistrate concluded his order as follows :—“ In this case the defendant is liable to six years imprisonment, but I would order the sentences as follows : For the first 6 months in default he will undergo 6 months r. i. and likewise for each subsequent period of 6 months in default he will be sentenced to 6 months r. i. I have adopted this course and sentenced him on this basis to 6 years rather than imposing on him 6 months r. i. for each such period and getting him up at the expiry of each of such 6 months periods to pass sentence on him again for the following 6 months. ”

E. R. S. R. Coomaraswamy, with *T. G. Gunasekera*, for the defendant-appellant.

No appearance for the applicant-respondent.

November 19, 1957. T. S. FERNANDO, J.—

When this appeal was argued before me, Counsel for the appellant indicated that the appellant was willing to deposit immediately a substantial part of the arrears of maintenance due from him. I therefore directed that the case be remitted to the Magistrate's Court to enable the appellant to pay in some of the money due from him. The record of the case has now been received back from the Magistrate's Court, and it is quite clear that the appellant has made no attempt to pay into Court any sum at all.

The only point that now remains to be decided relates to the sentence of imprisonment which the appellant has been ordered to undergo. The argument that the maximum term of imprisonment that could have been awarded in this case was six months depends on the question whether section 312 of the Criminal Procedure Code applies. That section can apply only if express provision had not been made in respect of enforcement in the Maintenance Ordinance itself. Such express provision has been made in section 8 of the Maintenance Ordinance, and I am unable to conclude that the sentence is illegal. I have been urged to interfere with the sentence on the ground that it is harsh. While the total sentence of imprisonment the appellant may have to undergo can extend to a long term, it is within the appellant's power to reduce this sentence. If he wishes to avoid a long term in jail he must make a reasonable effort to meet the obligations he owes to his wife.

The appeal is dismissed.

Appeal dismissed.

