

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

C.A. Revision Application No. CA/MC/RV/24/2016

In the matter of an application for Revision
made in terms of Article 138 of the
Constitution

Ptitgala Arachchige Shelton Abeywickrama
Prisoner No. S 38972

Welikada Prison, Baseline Road. Colombo,

Complainant

Vs.

1. The Hon. Attorney General,
Attorney General's Department,
Colombo 12
2. The Commission General of Prisons,
Prisons Headquarters,
Baseline Road, Colombo 9
3. The Superintendent,
Welikada Prison, Baseline Road Colombo 9

Respondents

Counsel : Kalyananda Thiranagama for the Petitioner
Varunika Hettige DSG for the Respondents.

Before : L.T.B. Dehideniya J.
: Shiran Gooneratne J.

Written submissions filed on : 19.07.2016 and 24.07.2017

Argued on : 11.09.2017

Decided on : 09.10.2017

L.T.B.Dehideniya J.

This is an application filed by the Petitioner seeking the interfering of this Court in the order of imprisonment made by the Magistrate Court of Balangoda in a maintenance application. The facts of this case as per the petition are that the Petitioner was ordered to pay the maintenance for his wife but was in arrears of 38 months and the Court has imposed a term of 38 months imprisonment. The contention of the petitioner is that the said term of imprisonment is illegal. The learned DSG submitted that the section 8 of the Maintenance Act provides for the Court to impose one month imprisonment for the failure to pay the maintenance for one month and the period of imprisonment that a Magistrate Court can order is govern by the Maintenance Act, not by the Criminal Procedure Code.

The fact that the Petitioner was in arrears of maintenance for 38 months was not in issue. The only issue was whether the Magistrate Court can impose a term of imprisonment of 38 months. The section 5 of the Maintenance Act No.37 of 1999 reads thus;

5.(1) Subject to the provisions contained in section 10, where any person against whom an order is made under section 2 or the proviso

to section 11 (1) thereafter called the "respondent") neglects to comply with such order, the Magistrate may, for every breach of the order, sentence such respondent for the whole or any part of each months allowance in default, to simple or rigorous imprisonment for a term which may extend to one month.

(2) The Magistrate may, if an application is made in that behalf by any person entitled to receive any payment under an order of maintenance, before passing a sentence of imprisonment on the respondent, issue a warrant directing the amount in default to be levied in the manner provided by law for levying fines imposed by Magistrates in the Magistrate Courts.

In the present case the learned Magistrate has ordered the imprisonment of one month for nonpayment every one month.

The power of the sentencing by the Magistrate Court is provided in section 14 of the Criminal Procedure Code. The section 14 reads thus;

A Magistrate's Court may impose any of the following sentences: -

(a) imprisonment of either description for a term not exceeding two years;

(b) fine not exceeding one thousand five hundred rupees;

[\$2, 21 of 2005] Repealed

(d) any lawful sentence combining any of the sentences aforesaid :

Provided that anything in this section shall not be deemed to repeal the provisions of any enactment in force whereby special powers of punishment are given.

Under the proviso to this section the Magistrate Court can impose any term of sentence if it is governed by any enactment in force whereby special powers of punishment are given. The Maintenance Act is such an enactment where special powers given to the Magistrate Court. Therefore the term of imprisonment that could be imposed by the Magistrate Court in a maintenance case for not complying the order to pay the allowance is governed by the Maintenance Act.

It had been held in the case of *Siriwardane V. D.Emalin* 59 NLR 263 that;

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.

Therefore the learned Magistrate's order of imprisonment for 38 months is not an illegal order.

The Petition is dismissed without costs.

President, Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal