

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

In the matter of an application for Revision in
terms of Article 138 read together with Article
154P of the Constitution of the Democratic
Socialist Republic of Sri Lanka

Court of Appeal case no. CA/MC/RV/14/2015

Supreme Court SC /FR/41/2015

Magistrate Court Attanagalla case No. 525

N.P.A.P.Aura saman Kumara

Prisoner No. R 47837

No,36, Darshana Pedesa,

Halangoda, Bokalagama

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,
Mahara Prison, Ragama
4. Hon. Wijedasa Rajapaksa,
Minister of Justice,
Ministry of Justice, Colombo 12.

Respondents

Before : L.T.B. Dehideniya J. (P/CA)

: Shiran Gooneratne J.

Counsel : Kalyananda Thiranagama for the Respondent Petitioner.

: Varunika Hettige DSG for the Respondents.

Argued on : 12.10.2017

Written submissions filed on 19.07.2017

Decided on : 23/10/2017

L.T.B. Dehideniya J. (P/CA)

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 Attanagalla in a maintenance application. The facts of this case as per the petition are that the Petitioner was ordered to pay the maintenance under the Maintenance Act but was in arrears of 116 months and the Court has imposed a term of 116 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 governed by the Maintenance Act, not by the Criminal Procedure Code.

The fact that the Petitioner was in arrears of maintenance for 116 months was not in issue. The only issue was whether the Magistrate Court can impose a term of imprisonment of 116 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 had 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 non compliance of 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 116 months is not an illegal order.

The next issue that I have to consider is whether the sentence is reasonable. The learned Counsel for the Petitioner submits that a good part of his life has to be spend in the prison and the state funds that is the public money that has to be spend on the Petitioner. The reasonableness of the term of imprisonment has to be considered with the fact that the difficulties faced by the applicant in nonpayment of the maintenance in the maintenance case. Not paying the maintenance for 116 months means

that the applicant had to survive for 116 months without the support of the Petitioner. Furthermore the Petitioner neglected the Court order for 116 months until he was sentenced.

The state funds had to spend on the prisoners. The prisons are maintained by the State to uphold the rule of law. Therefore, spending money on the prisoners cannot be considered as wastage.

The Petition is dismissed without costs.

President Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal