

1961

Present : H. N. G. Fernando, J.

P. RAMASAMY PILLAI, Appellant, and E. PERUMAL PILLAI,
Respondent

S. C. 1291/60—M. C. Colombo, 36141/A

*Industrial Disputes Act—Award made thereunder ordering payment of money—
Execution of award—Scope of Magistrate's jurisdiction—Section 33(2)—
Criminal Procedure Code, s. 312 (2).*

When an award is made under the Industrial Disputes Act ordering an employer to pay a sum of money to a person employed by him and the latter applies to the Magistrate under section 33(2) of the Act for an order that the amount payable be recovered in like manner as a fine imposed by the Court, the Magistrate has no jurisdiction to impose a term of imprisonment in default of the payment of the amount allowed by the award.

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

S. Sharvananda, with *J. V. C. Nathaniel*, for Respondent-Appellant.

Miss Maureen Seneviratne, for Applicant-Respondent.

A. A. de Silva, Crown Counsel, for Attorney-General as *amicus curiae*.

May 5, 1961. H. N. G. FERNANDO, J.—

The appellant had apparently been ordered by an award made under the Industrial Disputes Act to pay a sum of money to a person employed by him. Thereafter the person in whose favour the award had been made applied to the Magistrate under section 33 (2) of the Industrial Disputes Act, No. 43 of 1950, for an order that the amount payable be recovered in like manner as a fine imposed by the court. The Magistrate thereupon ordered the appellant to pay a fine of Rs. 1,100 (the amount stated in the award) but on being informed by the appellant that he was unable to pay the amount, and could not pay it even if time is granted, the Magistrate made an order imposing a sentence of three months' simple imprisonment "in default". I take it that the Magistrate meant that the appellant would have to serve a term of imprisonment if he did not pay the fine. Counsel appearing at the appeal for both parties, and for the Attorney-General as *amicus curiae*, are agreed that section 33 (2) of the Industrial Disputes Act did not confer jurisdiction on a Magistrate to impose a term of imprisonment even in default of the payment of the amount allowed by the award. That view of the matter was upheld in a parallel connection in *S. C. Case No. 29/M. C. Matala, No. 1679—S. C. Minutes of 17/10/60*.

Counsel for the Respondent-Applicant has, however, pointed out that the Magistrate should under section 312 (2) of the Criminal Procedure Code issue a distress warrant for the levy of the amount stated in the award. The order appealed from is therefore set aside and the record will be returned to the Magistrate for appropriate steps to be taken under section 312 (2).

Order set aside.
