

[IN THE COURT OF APPEAL OF CEYLON]

1972 Present: Fernando, P., Sirimane, J., Samerawickrame, J.,
and Siva Supramanlam, J.

A. J. ABDEEN, Appellant, and A. A. A. SITHY ALAVIA, Respondent

APPEAL No. 5 OF 1972 (P. C. APPEAL No. 37 OF 1970)

S. C. 825/68, with Application 295—M. C. Trincomalee, 5608

Muslim Marriages and Divorce Act (Cap. 115)—Sections 3, 64, 66—Sums due as maintenance awarded to a wife and child—Quazi may issue a single certificate to Magistrate—Period of imprisonment to which defaulter may be sentenced—Plea of prescription not available—Prescription Ordinance (Cap. 68), s. 10.

The appellant was sentenced by a Magistrate to imprisonment for seventy months for defaulting in payment of maintenance for his wife and child as ordered by a Quazi.

Held, that a single certificate may be issued by the Quazi to the Magistrate under section 64 of the Muslim Marriages and Divorce Act for the recovery of all arrears of maintenance. In such a case Section 66 of the Act empowers the Magistrate to sentence the defaulter to a term of one month's imprisonment in respect of the whole or any part of every monthly sum remaining unpaid.

Held further, that Section 10 of the Prescription Ordinance is not applicable to a claim for the recovery of arrears of maintenance. Recovery of maintenance already ordered by the Quazi is a step in execution proceedings and has nothing at all to do with "a cause of action".

APPEAL from a judgment of the Supreme Court.

C. Chellappah, for the appellant.

Respondent absent and unrepresented.

Cur. adv. vult.

May 16, 1972. SIRIMANE, J.—

This is an appeal from a judgment of the Supreme Court which affirmed an order made by the Magistrate of Trincomalee sentencing the appellant to seventy months imprisonment for defaulting in payment of maintenance for his wife and child as ordered by the Quazi of a district in that area.

It is admitted that the appellant was ordered to pay Rs. 75 per month as maintenance for his wife and Rs. 40 per month as maintenance for the child, and that at the time the Quazi issued a certificate to the Magistrate for the recovery of maintenance from the appellant a sum of Rs. 8,050 was due from him.

Leave to appeal has been granted by the Privy Council and the case was argued in this Court under the provisions of Section 19 of the Court of Appeal Act, No. 44 of 1971.

At the hearing before us Mr. Advocate Chellappah for the appellant confined himself to two grounds on which he sought relief:—

- (a) he challenged the validity of the certificate issued to the Magistrate by the Quazi for the recovery of the sum due;
- (b) he submitted that the respondent's claim was barred by Section 10 of the Prescription Ordinance.

In regard to (a) a single certificate was issued by the Quazi to the Magistrate under Section 64 of the Muslim Marriages and Divorce Act (Cap. 115) for the recovery of Rs. 8,050.

Mr. Chellappah submitted that the Quazi was obliged to issue a separate certificate for every single month in which a default was made. We are quite unable to accept this submission. Sub-section (2) of Section 64 enacts that the application by the Quazi "should be supported by a certificate under his hand stating the amount of the sum due". That obviously means the sum due at the time the certificate is sent to the Magistrate.

Section 3 sheds more light on this point when it provides that the sum due "may be recovered as a fine notwithstanding that such sum exceeds the amount of the maximum fine which the Magistrate may in his ordinary jurisdiction impose". Mr. Chellappah further submitted that the Quazi having certified the single sum of Rs. 8,050 as due, the Magistrate could inflict only a term of one month's imprisonment.

One has only to look at Section 66 of the Act to see the fallacy in this argument. The order made by the Quazi in this case was to make the payment of Rs. 115 per month. Section 66 empowers the Magistrate to sentence the defaulter in respect of the whole or any part of *any monthly sum* remaining unpaid, for a period not exceeding one month.

We find the second point raised by Mr. Chellappah equally untenable. He drew our attention to Section 10 of the Prescription Ordinance (Cap. 68) which provides that "no action shall be maintainable in respect of any cause of action not hereinbefore expressly provided for or expressly exempted....." unless the same shall be commenced within three years from the time when such cause of action shall have accrued. The short answer to this argument is that the recovery of maintenance already ordered by the Quazi is a step in execution proceedings and has nothing at all to do with "a cause of action".

The respondent was not represented before us.

The appeal is dismissed without costs.

Appeal dismissed.