

1923.

Present : Jayewardene A.J.

RAN MENIKA v. MUDALIHAMY.

525—P. C. Kegalla, 32,505.

*Appeal—Maintenance Ordinance—Time limit.*

Appeals in cases under the Maintenance Ordinance must be brought within a reasonable time.

THE facts appear from the judgment.

*Schokman*, for appellant.—The appellant was willing to take back his wife. She gives no reason for refusing to live with him. [JAYEWARDENE A.J. referred to the fact that the order was made in December, 1921.] There is no time limit for the appeal in a case of this kind (see *Fernando v. Fernando*<sup>1</sup>). Counsel also referred to 240—P. C. Kegalla, 22,493, where Schneider J. set aside an order made over eighteen months ago.

September 12, 1923. JAYEWARDENE A.J.—

This is an appeal in a maintenance case from an order made by the Police Magistrate on December 7, 1921. The appellant is evidently taking full advantage of the judgment of this Court that the time limit fixed for appeals from cases from the Police Courts under the Criminal Procedure Code is not applicable to appeals under the Maintenance Ordinance. There is no doubt that the section of the Criminal Procedure Code which deals with the time limit within which an appeal has to be filed in criminal cases has not been made applicable to the Maintenance Ordinance, but I think that appeals in maintenance cases must be brought within a reasonable time. Eighteen months cannot be said to be a reasonable time, and in my opinion the appeal is brought too late. The appellant says that he is prepared to take the wife back, but that the wife merely refused the offer without giving any reason for it. No reason for the refusal is recorded in the proceedings, but I must presume that the Magistrate when he ordered the husband to pay maintenance on the wife refusing to go back to him satisfied himself that the refusal was one which could be justified under the Maintenance Ordinance. I was referred to an unreported decision of my brother Schneider, S. C. No. 240—P. C. Kegalla, No. 22,493,<sup>2</sup> where he set aside an order which had been made about two years before the appeal was brought. That

<sup>1</sup> (1921) 23 N. L. R. 31.

<sup>2</sup> S. C. Min., May 31, 1922.

was a case in which the order had to be set aside in any circumstances, either by way of appeal or by way of revision, because it was shown that the husband had proved that he had obtained a dissolution of his marriage with his wife, and that at the time the claim for maintenance was made the applicant was not the wife of the respondent. In the circumstances that case is no authority binding me to entertain the appeal here after the expiry of eighteen months from the date of the order complained of.

I would invite attention to the necessity of amending the Maintenance Ordinance by fixing a time within which appeals should be brought from orders made under that Ordinance. As things are now, it is possible for aggrieved parties to appeal against orders made ever since the Maintenance Ordinance came into force. - It is to be hoped that the Legislature will take steps to have this omission remedied.

In the circumstances I would dismiss this appeal. As there is no appearance for the respondent, there will be no costs.

*Appeal dismissed.*

1923.

JAYEWAR-  
DENE A.J.

*Ran Menika*  
*v.*  
*Mudalihamy*