

1966

Present : Sri Skanda Rajah, J.

S. SARANERIS, Appellant, and A. PEMAWATHIE, Respondent

*S.C. 48/66—M.C. Balapitiya, 44743**Maintenance Ordinance—Section 8—Enforcement of order of maintenance—Sentence of imprisonment—Quantum.*

Section 8 of the Maintenance Ordinance empowers a Magistrate to sentence to imprisonment a defendant who commits a breach of an order of maintenance only in respect of the period of default for which distress warrant has been issued.

APPEAL from an order of the Magistrate's Court, Balapitiya.

No appearance for either party.

June 3, 1966. SRI SKANDA RAJAH, J.—

In this case for maintenance, the applicant-respondent made an application for Distress Warrant to recover arrears of Rs. 60/- due for three months from the defendant-appellant. The Distress Warrant was returned with the report that the defendant-appellant was not possessed of any property which could be seized under the Distress Warrant. At the time the Distress Warrant was returned, seven months' arrears were due but Distress Warrant had gone only in respect of three months' arrears. The Magistrate however proceeded to sentence the defendant-appellant to a term of seven months' rigorous imprisonment.

The Magistrate was, however, entitled to sentence the defendant-appellant to only three months' imprisonment regarding which Distress Warrant was issued. Section 8 of the Maintenance Ordinance (Chapter 91) empowers a Magistrate to sentence a defendant who commits a breach

of the order only in respect of the period of default for which Distress Warrant has been issued. It is only after Distress Warrant has been issued in respect of the four further months and returned with a report that the defendant can lawfully be sentenced regarding the four months' default. Therefore, I set aside the order of imprisonment for seven months and substitute in its place a sentence of three months' rigorous imprisonment.

Sentence reduced.