

1950

Present: Nagalingam J.

DINGIRIMENIKA, Appellant, and KIRIAPPU, Respondent

S. C. 289—M. C. Kegalle (Additional), 14,470

Maintenance Ordinance (Cap. 76)—*Jurisdiction—Court through which maintenance order is enforceable—Court where suit for maintenance may be instituted—Sections 2, 8, 11.*

An order of maintenance may be enforced not only through the Court within the jurisdiction of which the respondent resides but also through the Court in which the order itself was originally made.

Any Magistrate's Court has jurisdiction to entertain an application for maintenance irrespective of the question where the applicant or the respondent resides.

¹ 11 C. A. R. 241.² 28 C. A. R. 21.

A PPEAL from an order of the Magistrate's Court, Kegalle.

H. W. Jayewardene, for the applicant appellant.

No appearance for the defendant respondent.

October 10, 1950. NAGALINGAM J.—

This is an appeal from an order of the learned Magistrate of Kegalle refusing an application made by the applicant-appellant for an order on the respondent to show cause why he should not pay the arrears of maintenance due to her. The learned Magistrate has upheld the contention of the respondent that as he was at the date of the application living at Kandy outside the jurisdiction of the Magistrate's Court the application could not have been entertained by him but that the applicant should have been referred to prosecute her remedy in the Magistrate's Court at Kandy. I think this is clearly a wrong construction of the provisions of the Maintenance Ordinance. The whole frame-work of the Ordinance is intended to afford an expeditious machinery to enable an applicant to obtain an order for maintenance and to have such an order enforced from time to time. Section 8 of the Ordinance clearly refers to the Magistrate who made the order for maintenance as the proper judge who could sentence a person who has made default in the payment of maintenance to imprisonment because the section refers to "the Magistrate" and "the Magistrate" must refer to "the Magistrate" referred to in section 2. It is true that section 11 goes on to provide that an applicant in whose favour an order for maintenance has been made may apply to the Magistrate within whose jurisdiction the respondent lives to have an order made against him enforced by that Magistrate. But that section does not anywhere indicate that the Magistrate who made the original order should cease to have jurisdiction to proceed with the case and to make the appropriate orders from time to time if the respondent moves out of the jurisdiction of the Court. In fact, there is a fallacy which is implicit in this argument. It assumes that the court that has jurisdiction to make an order for maintenance is the court within the jurisdiction of which the respondent lives, but that is not so. There is no particular court that is prescribed for the institution of maintenance proceeding by an applicant. In fact, any Magistrate's Court would have jurisdiction to entertain a plaint irrespective of the question where the applicant or the respondent resides. The proper method of construing section 11 is to hold that it enables an applicant if she so desires to make an application to any Court other than the court which made the original order for the enforcement of the order that may have been made in her favour provided that the court is the court within whose jurisdiction the respondent resides. In other words, the court which entertains the plaint need not necessarily be the court within the jurisdiction of which the respondent lives, but if the order is to be executed in any other court the applicant must show that the court is one within the jurisdiction of which the respondent

resides. It does not, as I have already stated, fetter the right conferred on the applicant to proceed with the enforcement of the order in the court in which the order itself was originally made.

I therefore set aside the order of the learned Magistrate and direct that proceedings be had in due course. The respondent will pay the applicant the costs of this appeal.

Order set aside.
