

PARLIAMENT OF CEYLON

2nd Session 1971-72



Maintenance (Amendment) Act, No. 19 of 1972

Date of Assent : May 11, 1972

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L. D.—O. 54/70.

AN ACT TO AMEND THE MAINTENANCE ORDINANCE.

[Date of Assent: May 11, 1972]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Maintenance (Amendment) Act, No. 19 of 1972, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Short title and date of operation.

2. Section 2 of the Maintenance Ordinance, hereinafter referred to as the "principal enactment", is hereby amended as follows:—

Amendment of section 2 of the Maintenance Ordinance (Chapter 91).

(1) by the substitution, for the words "at such monthly rate, not exceeding one hundred rupees, as the Magistrate thinks fit," of the words "at such monthly rate, as the Magistrate thinks fit, having regard to the income of the defendant and the means and circumstances of the applicant or such child,"; and

(2) by the substitution, for the words "from the date of the order.", of the words "from the date on which the application for maintenance is made.".

3. Section 7 of the principal enactment is hereby amended as follows:—

Amendment of section 7 of the principal enactment.

(1) by the substitution, for the words "sixteen years," of the words "twenty-one years,";

(2) by the substitution, for the words "such child:", of the words "such child."; and

(3) by the omission of the proviso to that section.

4. Section 8 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 8 of the principal enactment.

Enforcement of orders of maintenance.

8. (1) Subject as otherwise provided in section 8A, where any person against whom an order is made under section 2 (hereinafter called the "defendant")

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neglects to comply with the order, the Magistrate may for every breach of the order sentence such defendant for the whole or any part of each month's allowance in default, to simple or rigorous imprisonment for a term which may extend to one month.

(2) The Magistrate may, if an application is made in that behalf by any person entitled to receive any payment under an order of maintenance, before passing a sentence of imprisonment, issue a warrant directing the amount in default to be levied in the manner by law provided for levying fines imposed by Magistrates in the Magistrate's Courts.

Insertion of new sections 8A and 8B in the principal enactment.

5. The following new sections are hereby inserted immediately after section 8, and shall have effect as sections 8A and 8B, of the principal enactment:—

Attachment of salary of defendant.

8A. (1) If, on the application of a person entitled to receive any payment under an order of maintenance, it appears to the Magistrate that the defendant has defaulted in the payment of maintenance due for a period exceeding two months, the Magistrate may, after due inquiry, by an order, hereinafter referred to as an "attachment of salary order", require the person to whom the order is directed, being a person appearing to the Magistrate to be the defendant's employer, to deduct, for such period as may be specified in the order, such amount from the defendant's salary as may be specified in the order and forthwith to remit that amount to the Court.

(2) (a) Before an order is made under subsection (1) of this section, the Magistrate shall notice the person on whom he proposes to serve an order under that subsection to show cause, if any, why an order should not be made under that subsection and to require him to furnish to the Court, within such period as may be specified in such order.

the salary particulars of the defendant. Any order made under subsection (1) of this section may be the subject of an appeal to the Supreme Court by any person aggrieved by such order but notwithstanding such appeal, the Magistrate may decide to continue proceedings under this Ordinance. The provisions of section 17 of this Ordinance shall apply to or in relation to every such appeal.

(b) The Magistrate may also by an order served on the defendant require him to furnish to the Court, within such period as may be specified in such order, a statement specifying—

- (i) the name and address of his employer, or of his employers, if he has more than one employer;
- (ii) such particulars as to his salary as may be within his knowledge;
- (iii) and such other particulars as are required or necessary to enable his employer or employers to identify him.

(3) A document purporting to be such a statement as is mentioned in subsection (2) (b) of this section shall, in any proceedings in any Court, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

(4) The Magistrate shall not make an attachment of salary order if it appears to him that the failure of the defendant to make any payment in accordance with the order of maintenance in question was not due to his wilful refusal or culpable neglect.

(5) In determining the amount to be deducted in terms of subsection (1) of this section, the Magistrate shall have regard to the resources and needs of the

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defendant and the needs of the person, payment of whose maintenance is in default.

(6) An attachment of salary order shall not come into force until the expiration of fourteen days from the date on which a copy of the order is served on the person to whom the order is directed.

(7) An attachment of salary order may, on the application of the defendant or the person entitled to receive payments under the order of maintenance, be discharged or varied.

(8) A person to whom an attachment of salary order is directed shall, subject to the provisions of this Ordinance, comply with the order or, if the order is subsequently varied under subsection (7) of this section, with the order as so varied.

(9) For the purposes of this section,—

(a) where the defendant is a public servant, the head of the department to which he is for the time being attached shall be deemed to be his employer; and

(b) where the defendant is a member of the Local Government Service and employed in any local authority, the Commissioner, if it be a Municipal Council, or the Chairman, if it be an Urban Council or a Town Council or a Village Council, as the case may be, shall be deemed to be his employer.

(10) Where on any occasion on which any deductions have to be made from the salary of a defendant in pursuance of an attachment of salary order, there are in force two or more attachment of salary

orders relating to such salary, then, for the purposes of complying with this section, the employer shall—

- (a) deal with such orders according to the respective dates on which they came into force, disregarding any subsequent order until any earlier order has been dealt with; and
- (b) deal with any subsequent order as if the salary to which such order relates was the residue of the defendant's salary after making any payments in pursuance of an earlier order.

(11) An employer who, in pursuance of an attachment of salary order, makes any payment to Court under this section shall forthwith give to the defendant a statement in writing specifying the amount deducted from his salary in pursuance of such order.

(12) Where any payment is made by an employer in pursuance of an attachment of salary order, the Court shall forthwith pay that amount to the person who is entitled to receive the same.

(13) Any employer who fails or neglects to comply with an attachment of salary order shall be liable on conviction by a Magistrate's Court to a fine not exceeding two hundred rupees and in the case of a second or subsequent conviction in respect of the same attachment of salary order, to a fine not exceeding five hundred rupees:

Provided that it shall be a defence for an employer charged with failing or neglecting to comply with an attachment of salary order to prove that he took all reasonable steps to comply with such order.

(14) The provisions of this section shall have effect notwithstanding anything in any other written law.

(15) For the purposes of this section, the expression " salary " includes all allowances and wages.

Payment of maintenance through post office, bank or divisional revenue officer.

8B. (1) Where an order for maintenance is made under the provisions of this Ordinance, the Magistrate may direct the defendant that the amount of the payment due under such order shall be deposited each month on or before such date as may be specified in such order in favour of the person entitled to such payment, at such post office, bank or divisional revenue officer's office as may be specified in such order, and the amount so deposited may be drawn by such person from such post office, bank or divisional revenue officer's office, and it shall be the duty of the officer for the time being in charge of such post office, bank or divisional revenue officer's office to pay that amount to the person entitled thereto upon application made in that behalf.

(2) Where a direction has been made under subsection (1) of this section and there has been default in the deposit of payments as specified in such direction, the officer for the time being in charge of such post office, bank or divisional revenue officer's office shall report such default to the Court within seven days of such default and the Magistrate may in such event, notice the defendant to show cause why he should not be dealt with for such default, and if satisfied after due inquiry that there has been any default, impose such punishment as is provided by this Ordinance.'

Amendment of section 10 of the principal enactment.

6. Section 10 of the principal enactment is hereby amended by the substitution, for all the words from " as he deems fit, " to the end of that section, of the words " as he deems fit. "

7. Section 11 of the principal enactment is hereby amended as follows:—

Amendment of section 11 of the principal enactment.

(1) by the substitution, for the words, "in any place where the person against whom such order is made may be.", of the following:—

"over the place where any such person or the defendant may be,"; and

(2) by the substitution, for all the words from "of the allowance due," to the end of that section, of the following:—

"of the allowance due, proceed under section 8 or section 8A."

8. Section 13 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 13 of the principal enactment.

"Inquiry how applied for. Applications and process to be free of stamp duty.

13. Every application for an order of maintenance or to enforce such an order shall be in writing and shall be signed by the applicant and shall be free of any stamp duty. Every summons to a defendant or witness shall also be free of stamp duty."

9. Section 14 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 14 of the principal enactment.

"Commencement of inquiry.

14. (1) Every application for an order of maintenance or to enforce an order of maintenance shall be supported by an affidavit stating the facts in support of the application and the Magistrate shall, if satisfied that the facts set out in the affidavit are sufficient, issue a summons on the defendant to appear and to show cause why the application should not be granted.

(2) The Magistrate shall, after such inquiry as he may consider necessary, make order allowing or refusing the application and, if necessary, an order under section 8 or section 8A."