

**Queen-empress Vs. Narain**

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**Court :** Allahabad

**Decided On :** Dec-31-1969

**Reported in :** (1887)ILR9All240

**Judge :** John Edge, Kt., C.J., ;Straight and ;Oldfield, JJ.

**Appellant :** Queen-empress

**Respondent :** Narain

**Judgement :**

John Edge, Kt., C.J.

1. I am of opinion that the principle enunciated in the ruling reported in the Madras High Court Reports, Vol. 6, p. xxiii (Appendix), is applicable to a case arising under Section 488 of the present Criminal Procedure Code. In my opinion the section contemplates that a separate warrant should issue for each separate monthly default, and where that is done, the maximum punishment can be one month's imprisonment. If a warrant is issued for an accumulation of arrears for several months, the Magistrate has no power to pass a greater sentence in such a case than if the warrant in that case only related to one particular breach. To hold otherwise would raise a very great difficulty in regard to the manner in which the amount of punishment would have to be arrived at. For instance, an order is made for the payment of Rs. 10 monthly, and default is made for six months, from January to June. On this a warrant is issued for Rs. 60 arrears and returned by

levy of Rs. 30. It would be difficult to say how the Magistrate should ascertain for which month's default he was to inflict punishment--whether he was to spread the payment over six months, or whether he was to apply it to three months; and, if so, whether in discharge of the first three months, or the last three months, or the intermediate three months. I am of opinion that the regular proceeding is that only one warrant should issue for each separate monthly breach, and that a Magistrate cannot inflict a greater punishment than one month on each such occasion.

**Straight, J.**

2. I am of the same opinion. It appears to me that the provisions contained in the third paragraph of Section 488 of the Criminal Procedure Code, being distinctly of a penal character, ought to be strictly construed, and, as far as possible, construed in favour of the subject. As I interpret that section, a condition precedent to the infliction of a term of imprisonment is the issue of a warrant in respect, of each breach of the order directing maintenance, and where, after distress has been issued, nulla bona is the return. I am borne out in this view by the language of the latter portion of the section, which says that the punishment which is to be inflicted under this section is to be inflicted in respect of the 'whole or any part of each month's allowance remaining unpaid after the execution of the warrant.' That is to say, a warrant shall be issued in respect of each separate individual breach of the order of maintenance. I am not prepared to say, having regard to the ruling of the Madras High Court, 6 Mad. H. C. Rep., Appendix, p. xxiii, that if by an informality one warrant may have been issued in respect of several breaches, and it appears that after the issue of that warrant distress has been made and there is still money unpaid by the party against whom the order has been made, it might not be within the competence of the Magistrate to inflict a sentence of imprisonment. But that sentence would have to be regarded as applicable for a single breach, and could only extend to one month. But, in my opinion, the section contemplates one warrant, one punishment, and does not contemplate a cumulative warrant and cumulative punishment. I think, therefore, that in the present case the proper course will be to direct that the term of imprisonment ordered by the Magistrate be reduced to one month's simple imprisonment. Looking to the terms of Section 2,

Clause 18 of the General Clauses Act, 'imprisonment' in Section 488 may be either simple or rigorous.

**Oldfield, J.**

3. I think that a claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding and arrears be levied under a single warrant. At the same time I quite concur in the opinions expressed that, where this is done, the term of imprisonment inflicted in default must be limited to a term of one month.

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