

In Re Chandulal Ranchhod

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SooperKanoon Citation : sooperkanoon.com/331460

Court : Mumbai

Decided On : Apr-11-1919

Reported in : AIR1919Bom140; (1919)21BOMLR766

Judge : Heaton and ;Shah, JJ.

Appeal No. : Criminal Application for Revision No. 14 of 1919

Appellant : In Re Chandulal Ranchhod

Judgement :

Heaton, J.

1. This is in form an application under Section 489 of the Criminal Procedure Code by a wife who in the year 1910 obtained an order under Section 488 for maintenance from her husband. She asked for an increased allowance and that is granted, and now the husband has applied to us in the exercise of our revisional powers.

2. The facts we have to deal with are these: The order under Section 488 was made in 1910. In 1912 the husband obtained a decree against his wife for restitution of conjugal rights. That decree was never executed. The wife has never since 1910 lived with her husband and the husband has continued to pay without objection the allowance directed by the Magistrate's order of 1910. Those, as the case is presented to us, are undisputed facts.

3. It seems to me that the decree of 1912 did as a matter of law determine or put an end to the Magistrate's order under Section 488, and for this simple, but to me convincing, reason. The decree for restitution of conjugal rights is a statement by a Court of matrimonial jurisdiction that husband and wife are under an obligation to live together and that the wife has no right to live apart from her husband. The Magistrate's order of 1910 was in law a statement that the wife had a right to live apart from her husband ; but of course, in the nature of things, any order made by a Magistrate in the exercise of the limited powers conferred on Magistrates by Chapter XXXVI of the Criminal Procedure Code, is subject to the orders of civil Courts exercising matrimonial jurisdiction. For it is those latter Courts and they alone, that have the power to say finally what are the legal relations between the husband and the wife. A Magistrate under Chapter VI of the Criminal Procedure Code is granted a very limited power for the sake of convenience and that only. Therefore it seems to me that the wife was not in a position to make a proper application under Section 489, because there was no subsisting order under Section 488. However in all the circumstances of the case we have to come to the conclusion that the Magistrate should treat the application nominally under Section 489 as an application made by the wife under Section 488. The Magistrate should hear any further evidence that may be offered and what arguments are offered and then determine, in the light of the circumstances at or about the date of the application, whether the wife is or is not entitled to an order for maintenance under Section 488, and, if she is, what the amount of that maintenance should be. The proceedings should be returned to the Magistrate for this purpose. We set aside the order which the Magistrate has made.

Shah, J.

4. I agree.