

Yesubai Vs. Parasram Daji

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Court : Mumbai

Decided On : Aug-05-1932

Reported in : AIR1933Bom21; (1932)34BOMLR1449

Judge : John Beaumont, Kt., C.J. and ;Nanavati, J.

Appeal No. : Criminal Application for Revision No. 190 of 1932

Appellant : Yesubai

Respondent : Parasram Daji

Judgement :

John Beaumont, Kt., C.J.

1. This is an application in revision made from an order of the Chief Presidency Magistrate by which he refused the applicant maintenance which she was claiming under Section 488 of the Criminal Procedure Code, It appears that the applicant was married to the opponent in January 1926 when she was a child of some eight years of age. In January 1931 when she was living with her husband she left his house for an hour or two with a man named Gangaram, who is said to be, and I will assume is, a Mahar by caste, and she had sexual intercourse with Gangaram, On her return to the house of her parents-in-law, she told them what had happened and said that the intercourse was against her will. Thereupon they took her to the police and she lodged a complaint against Gangaram of rape and kidnapping, and we have on the record the statements she made to the police,

and the statements which her parents-in-law made. Gangaram thereafter disappeared, and therefore the complaint against him became abortive and the question whether he actually committed rape or not has never been judicially determined. As far as I can see from the statements made by the applicant and her parents-in-law there certainly seems good reason for thinking that it was a case of rape, and I say that because the girl on her return from being with Gangaram at once complained of what had happened to her to her parents-in-law. The subsequent conduct of the complainant is always a crucial matter in cases of rape. If the girl had gone willingly with the man, she would presumably have said nothing about it, and in that case the facts would never have been known. On March 1, 1931, there was a Caste meeting convened by the husband to consider this case. The husband and wife are Dhobies. On April 5, the applicant was outcasted at a caste meeting. On April 10, the applicant called on the husband to maintain her and on the 16th he refused and this complaint was lodged on May 23.

2. The learned Chief Presidency Magistrate was of opinion that he had a discretion under a 488 of the Criminal Procedure Code whether to order maintenance or not, and that the fact that the wife had been outcasted, and that her husband therefore could not take her to live with him without himself being outcasted, was a sufficient reason to induce the learned Magistrate to refuse to order maintenance. In arriving at that conclusion he relied on the case of *Ponnayee v. Periya Mooppan* I.L.R. (1908) Mad. 185 That was a case in which the facts were not the same as in the present case; there was no evidence that the wife was a mere child, and the trying Magistrate evidently thought that the act of unchastity which was complained of in that case was not an isolated one. But in any case we are not, I think, concerned with the way in which another Court in another case exercised its discretion. We have to consider whether the learned Chief Presidency Magistrate exercised his discretion properly on the present occasion, If the learned Chief Presidency Magistrate be right, and if the mere fact that the wife has been outcasted is a sufficient reason for preventing the Court giving maintenance, it seems to me that the learned Magistrate is really surrendering his discretion to the caste. The proceedings of the caste meeting are of course not before this Court, and we have no power to interfere with their decision, but when we are asked to accept their

decision as a matter controlling the exercise of our discretion it is pertinent to observe on what sort of principles the caste appears to have acted. As far as I can ascertain from the record, the charge against this girl was that she had sexual intercourse with a man of a lower caste, and that fact had never been denied by her. Apparently the caste meeting considered that it was irrelevant to inquire whether there was a single act of unchastity or more than one and whether the act was done with the consent of the girl or against her wishes, If the caste meeting considered that a child of fourteen should be excommunicated because she had been raped by a man of a lower caste, I can only say that the decision is not one which commends itself to me, and I am certainly not prepared to allow such a decision to influence the exercise of my discretion. Even if the act of sexual intercourse was with the consent of the girl, which on the evidence it appears to me that it was not, it is a single isolated act. There is no suggestion that she has ever seen the man since, or that she ever went out with him on any other occasion, and it would certainly seem harsh, to say the least of it, to penalise a child of fourteen because of a single lapse. Moreover, I think that if we did act on the decision of the caste in this matter we should really be contravening the spirit, and probably the letter, of the Removal of Caste Disabilities Act. For these reasons I think that the learned Chief Presidency Magistrate here exercised his discretion on a wrong principle, and that he ought to have allowed maintenance.

3. There are no materials before us to enable us finally to fix the amount of maintenance which should be allowed, and the learned Chief Presidency Magistrate will have to go into that question. But we do not propose that the husband should avoid making any payment whilst the matter is being further considered. On the basis that his income is Rs. 22 a month, as his learned advocate states, we think he ought to pay Rs. 7 a month to his wife. What we propose to do is to direct that the husband shall pay Rs. 7 per month to his wife by way of maintenance as from the date that he ceased to maintain her until the learned Chief Presidency Magistrate shall vary the amount.

4. I may mention one other matter. The husband alleges that on April 24 he divorced his wife. The general rule of Hindu law is that there is no such thing as divorce; marriage is indissoluble. If the husband relies on some special custom in

this case entitling him to divorce his wife, he will have to prove it. Apparently his contention is that he is entitled to divorce his wife without her consent, without making any payment to her, and without proving any default on her part. We cannot of course in these proceedings deal with any question of divorce, but I am certainly not disposed to act on the husband's statement that he has in fact divorced his wife.

5. Under Section 488, Sub-section (7), we have power to deal with costs, and as the husband has failed, he must pay the costs of the applicant in the Court below and in this Court subject only to this that the learned Chief Presidency Magistrate directed the applicant to pay a sum of Rs. 15 on one occasion by way of costs and we do not intend in any way to interfere with that order which was made in the discretion of the learned Magistrate. Those costs, therefore, will remain to be paid by the applicant, and if necessary, there will be a set-off. Costs of this Court to be fixed by the Registrar and the costs of the Court below by the Chief Presidency Magistrate.

Nanavati, J.

6. I agree.