

State Vs. Manda

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Court : Mumbai

Decided On : Nov-11-1955

Reported in : AIR1956Bom197; 1956CriLJ482

Judge : Bavdekar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 488

Appeal No. : Criminal Ref. No. 98 of 1955

Appellant : State

Respondent : Manda

Advocate for Pet/Ap. : Govt. Pleader

Judgement :

ORDER

1. This is a reference made to this court by the learned Sessions Judge Kolaba, to revise an order for maintenance made by the learned Judicial Magistrate, First Class, Murud. Manda the wife made the application on the ground that the applicant who was serving at Bombay had sent her to Dongari where the rest of his family including his brother were living and where the brother did not give her sufficient food and beat her owing to which she left the house.

The learned trial Magistrate did not accept the wife's contention that the husband or even the husband's brother illtreated her and his finding was that the wife left the house of the husband because she was not given sufficient food; but the learned Sessions Judge pointed out in his reference that that was not due to the fact that the applicant husband wanted to starve the wife.

The husband who was serving at Bombay was earning an income of Rs. 106. He was a member of a joint Hindu family, and misfortune overtook the family because both the husband's father as well as the husband's brother lost their jobs, so that there was a finding that he could not maintain the whole family at Bombay with the salary which he was earning namely Rs. 106/- per month. He sent the whole family to Dongari.

It seems to me that the wife was not getting there sufficient food; but as the learned Sessions Judge points out that was not due to the fact that the husband wanted to neglect his wife or illtreat her, but the family fell in evil circumstances and the amount of money which the husband could send to Dongari after providing for his own maintenance in Bombay was limited and the limited amount which the husband could send was not sufficient to give adequate food for the whole family. It is obvious in these circumstances that it could not be said that the husband had neglected or refused to maintain his wife.

2. The learned Magistrate appears to have been influenced in the order which he made because the wife wanted during the course of the arguments to be maintained separately either at Dongari or at Bombay. The applicant said that he could not do so and the wife must stay as a member of the joint family, and she would not. Immediately it was found that the wife had failed to make out a case of neglect or refusal to maintain, her application for maintenance should have been dismissed; but even apart from that refusal of the husband to maintain his wife separately did not show that he wanted to neglect or refuse to maintain her.

Once it was found that the wife left the house at Dongari voluntarily there was no reason why because the husband refused to maintain the wife separately whether at Bombay or at Dongari an inference should be drawn of a desire in the mind of the husband to neglect his wife. The only thing which has been made out was that

the wife was not getting sufficient food. Apparently the circumstances of the family are better now so that this complaint of the wife should be removed.

I think that the wife is attempting to persuade the husband to live separately from his family taking advantage of the former evil circumstances upon which the family fell owing to which there was no sufficient food not only for the wife but the other, members of the family at Dongari.

3. I set aside the order which has been passed for maintenance by the learned trial Magistrate and dismiss the wife's application, if the wife does think to go to the husband and the husband would not maintain her along with the rest of the family and the wife would not get sufficient food to eat it would be open to the wife to make an application for separate maintenance.

4. Reference allowed.

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