In Re: Chhagan Hargovan

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Court : Mumbai

Decided On : Nov-18-1931

Reported in : AIR1932Bom179; (1932)34BOMLR276; 137Ind.Cas.27

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

Appeal No. : Criminal Revision No. 272 of 1931

Appellant : In Re: Chhagan Hargovan

Judgement :

John Beaumont, Kt., C.J.

1. This is an application in revision against the order passed by the Presidency Magistrate, Second Court, directing under Section 488 of the Criminal Procedure Code the applicant to pay a certain amount to his wife for maintenance, and the only point of law which arises is as to whether the learned Magistrate ought to have recorded the evidence. Sub-section (6) of Section 483 provides that the evidence shall be recorded in the manner prescribed in the trial of summons cases. Under Section 355 it is provided that in summons cases tried before a Magistrate other than a Presidency Magistrate a memorandum of the evidence is to be recorded, but as the Magistrate in this case was a Presidency Magistrate Section 355 does not really help. Then Section 362 deals with the case of Presidency Magistrates, and provides that in cases in which no appeallies it shall not be necessary for the Presidency Magistrate to record the evidence or frame a

charge. It is quite true that that section does not deal in terms with summons cases, but Mr. Godinho for the applicant admits that in summons cases an appeal does not lie. Therefore, in substance Section 362 does deal with summons cases tried by Presidency Magistrates, and it seems to me that the effect of Section 488, Sub-section (6) and Section 362, Sub-section (4) read together is that in a summons case tried by a Presidency Magistrate it is not necessary to record the evidence. I think that that was the decision of this Court in the case of In re Hanifabai : (1930)32BOMLR1499 though I am bound to say that the judgment of Mr. Justice Madgavkar on this point is not so clear as the judgments of that learned Judge usually were.

2. Then it is said, secondly, that if the learned Magistrate was not bound to record evidence, at any rate he ought to have done it and that we ought to order him to do it, and that course seems to have been adopted by this Court in the case of In re Hanifabai. I confess I feel some difficulty in seeing what justification there is for this Court interfering with the manner in which a Presidency Magistrate chooses to conduct his business within the law. If we are right in holding that he was not bound to record the evidence under the Code, I do not quite follow on what ground we can say that ha ought to have recorded the evidence. It is said that the evidence in this case was taken on various days-part of it in the middle of July, part of it towards the end of July and part in the middle of August-and it is said that the learned Magistrate could not possibly remember on the last occasion, when he delivered his judgment, the evidence which had been given on the former occasions. Well, I do not know how excellent a memory the learned Magistrate may have. But if he was not prepared to trust entirely to his memory, I should think that he probably had some private note which enabled him to recall the evidence. The learned Magistrate, after all, is a Magistrate of great experience, and these Magisterial hearings are very frequently adjourned for long periods, and I think I must assume that the learned Magistrate adopts the method which suits him best for recalling to his mind the evidence which was given on a previous occasion. That being so, I think we cannot interfere in revision. The application will therefore, be dismissed,

Broomfield, J.

3. I agree.