

State Vs. Janakibai

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Court : Mumbai

Decided On : Nov-11-1955

Reported in : AIR1956Bom432; 1956CriLJ731

Judge : Bavdekar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 489

Appeal No. : Criminal Ref. No. 93 of 1955

Appellant : State

Respondent : Janakibai

Advocate for Def. : G.D. Moghe, Adv.

Advocate for Pet/Ap. : Government Pleader

Judgement :

1. This is a reference made to this Court by the learned Additional Sessions Judge, North Satara, for setting aside an order for enhancement of maintenance which has been made by the learned Civil Judge and Judicial Magistrate First Class, Patan.

2. The applicant before the learned trial Magistrate was the wife and she had been given maintenance at the rate of Rs. 6 per month in the year 1924. The wife did not ask for anything more thereafter till the year 1952 when she made an

application for enhancement of the maintenance.

The application principally appears to have been upon the footing that Rs. 6/- was not sufficient for the wife to maintain herself in the year 1952. The learned Magistrate accepted it as reasonable and increased the maintenance to Rs. 15/- per month taking into consideration the husband's income.

3. The husband then went to the learned Sessions Judge in revision and the learned Sessions Judge said that before an order for enhancement of maintenance could be made under Section 489 there must be a change in the circumstances either of the husband or of the wife, and Inasmuch as there was no change in the circumstances of either the husband or the wife the learned trial Magistrate has no jurisdiction to enhance the maintenance. He said in the second instance that he was not satisfied that the husband was in a position to give his wife Rs. 15 per month as maintenance.

4. Now, it appears to me, however, that the learned Sessions Judge took an unnecessarily narrow view of the words 'change in the circumstances of wife' under Section 489. One of the circumstances which governs award of maintenance obviously is the cost of living and if the cost of living has gone up then there is a change in the circumstances of the wife, which enables her to ask for enhancement of the maintenance.

5. Nor is there any substance in the contention that the husband was not in a position to give the wife Rs. 15/- per month apart from the fact that that is a question of fact. As the learned Sessions Judge pointed out there was land on his name assessed at Rs. 123. It appears that certain proceedings for partition were going on' to which the applicant deposed but the partition had as matter of fact not taken place.

The husband tried to make out that he was not practising because of old age; but the learned Magistrate did not believe this because he said that in the case of a medical practitioner, even though he be a vaidya, with experience his pecuniary gain increases. What the actual income of the husband was is a matter for the learned Magistrate to determine. There are no materials whatsoever from which I

can say that the learned Magistrate was wrong,

6. I am told, however, that subsequently a partition as a matter of fact has taken place and the husband is now separate from everybody else, But in case there is a change in the circumstances of the husband which disables him from giving his wife Rs. 15/- it would be for the husband subsequently to make an application.

7. There will be no order consequently on the reference.

8. Order accordingly.

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