

David Sassoon Vs. Emperor

David Sassoon Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/356251

Court : Mumbai

Decided On : Jan-14-1925

Reported in : AIR1925Bom259; 87Ind.Cas.431

Judge : Norman Macleod, C.J. and ;Coyajee, J.

Appellant : David Sassoon

Respondent : Emperor

Judgement :

Norman Macleod, C.J.

1. The complainant in this case was one Mrs. David Bassoon who presented an application under Section 488, Cr. P.C., for maintenance for herself and her four sons against the respondent David Sassoon, her husband and the father of the children. The defence to the application, as set out in the respondent's statement, was, that the complainant was misbehaving herself with a certain person, and had gone to Calcutta without his permission. With regard to the maintenance of the four sons, the respondent said that he was willing to. have the children with him.

2. On the facts the Magistrate came to the conclusion without any hesitation that the defence was not proved in any of its material particulars. Consequently the charge of misconduct was proved to be false. The Magistral further considered that the complainant had satisfied him that the respondent having sufficient means was neglecting to maintain his wife and his four sons who were unable to maintain

themselves. The ages of the children varied from seven to eleven. The Magistrate then considered the contention of the respondent that he was willing to keep the children with himself, and, therefore, no order under Section 488 could be made against him. He said:

The point is not free from difficulty. It is not covered by any Bombay authority, so far as I know. There are conflicting rulings of the Punjab Court, supporting respondent's contention, on the one hand viz., *Man Singh v. Dharmon* 18 P.R. 1894 Cr and *Sardar Muhammad v. Nur Muhammad* 22 P.R. 1917 18 CrL.L.J. 811J and the decisions of the Burma Court, supporting the complainant on the other hand *Murgesar Mudaliar v. Sodiamma* 16 CrL.L.J. 656. Considering the object underlying Section 488, Cr. P.C., I prefer to follow Burma rulings rather than Punjab ones. Otherwise in those cases where children are very young, as in this case, a man knowing full well that no mother would part with such children, has simply to make an ostensible offer to keep the children with him and he can thus defeat the object of Section 488, which is to secure provision for helpless children.

3. The Magistrate then made an order that the respondent should pay in the aggregate its. 90 a month to the complainant for the maintenance of herself and the children.

4. On November 26, a rule was granted on the application of the respondent in order that this question might be decided by this Court. Thereafter an application was made on. the Crown side by the respondent under Section 491, Cr. P. C, asking that the custody of the sons should be given to him. The application was heard by Mr. Justice Mirza who came to the conclusion that the petitioner's allegation that for some time past his wife had led an. unchaste life and that he was afraid that if his children were to continue to reside with her they would be contaminated, was absolutely without foundation. The learned Judge was satisfied on the evidence that Mrs. Bassoon had looked after the children very well. She had sent the elder boys to school and had educated them at her own expense. He was also satisfied, that the children would-be much better looked after by the mother than they would be if they were thrown to the tender mercies of their father.

5. We can now consider the proper construction of Section 488 of the Cr. P.C., in the light of the respondent's contention.

6. We think that with regard to the maintenance of children, it is sufficient under Sub-section (1) of Section 488 if the neglect or refusal to maintain them is proved. On such proof, the Magistrate can make an order, for the payment of a monthly allowance for the maintenance of each child to such person as the Magistrate from time to time directs. An offer to maintain the children in the future is not sufficient of itself to debar the Magistrate from making the order. The Magistrate will be entitled to consider the circumstances in which the offer was made, and whether it was right and proper that the children, if not in the custody of the father, should be handed over to him.

7. With regard to the maintenance which can be directed to be paid to a wife in case her husband neglects or refuses to maintain her, there is a special proviso to the section that if the husband offers to maintain his wife on condition of her living with him, and she refuses to live with him, the Magistrate may consider any grounds of refusal stated by her, and may make an order under the section notwithstanding such offer, if he is satisfied that there is just ground for so doing. There was a very good reason in our opinion why the Legislature did not include children in that proviso, namely, so that the onus should not be thrown on them of stating grounds of refusal which would have to be considered by the Magistrate before making an order for their maintenance. It could not have been intended that the father by stating his willingness to maintain the children could deprive the Magistrate of his jurisdiction to make an order under the section. It seems to us that once the Magistrate is satisfied that a father has neglected or refused to maintain his children, he is entitled to make an order for their maintenance, though he may consider any offer by the father to maintain them in the future on its merits. In this case, agreeing, entirely with the remarks of the learned Judge who heard the application under Section 491, Cr. P.C., we are satisfied that the children ought to remain with the mother. The Rule will, therefore, be discharged.

Coyajee, J.

8. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com