

Laxmi Narain Vs. State

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Court : Allahabad

Decided On : Nov-24-1958

Reported in : AIR1959All556; 1959CriLJ1039

Judge : M.C. Desai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 488(3) and 488(6)

Appeal No. : Criminal Ref. No. 230 of 1956

Appellant : Laxmi Narain

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Disposition : Reference accepted

Judgement :

ORDER

M.C. Desai, J.

1. This is a reference by the Additional District Magistrate, Varnasi, recommending that an order issued by a first Class Magistrate on 22-12-1955 directing a process to be issued for recovery of arrears of maintenance allowance under Section 488 (3), Criminal P. C., be set aside. The wife, who is the opposite party before me and

is absent, obtained a maintenance order in her favour on 15-6-1955, and on 22-12-1955 applied for enforcement of the order alleging non-payment of any allowance.

On the same date the Magistrate ordered a process to be issued; he did not issue any notice to the husband before ordering a process to be issued and did not make any enquiry whether the allowance was really in arrear and whether the husband's refusal or failure to pay the allowance was for sufficient cause or not. The learned Additional District Magistrate recommends the quashing of the order on the ground that it could not be passed without an opportunity being given to the husband to be heard against it; I agree.

2. Sub-section (3) to Section 488 provides that if the husband fails, without sufficient cause, to comply with the maintenance order, the Magistrate may issue a warrant for levying the amount due provided 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 issue a warrant for levying the amount due notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Though it is not said in so many words that before issuing a warrant for levying the amount due, the Magistrate must hold an enquiry in the presence of the husband, that is necessarily the intention of the Legislature. In the first place, the Magistrate can issue a warrant only if he finds that the husband failed without sufficient cause to comply with the order; consequently an enquiry whether the failure was for sufficient cause or not must be held.

The statement of the wife alone may suffice to satisfy him that the failure was without sufficient cause but the enquiry must be made in the presence of the husband, who must have an opportunity of not only cross-examining the wife but also of producing evidence to prove that his failure was for sufficient cause. The finding that his failure was for sufficient cause is against him and the well-known principle of natural justice requires that before it is given he must be given an opportunity to be heard.

The provision that the Magistrate may issue a warrant notwithstanding the husband's offer to maintain his wife itself contemplates that the offer has been made before the issue of warrant. The surest way of ensuring that the husband has been afforded an opportunity of making such an offer before a warrant is issued is by issuing a notice to him to show cause why a warrant should not be issued; he is then expected to appear in court and make the offer and the Magistrate will consider whether the wife's refusal to accept it is just or not.

An application for enforcement of the order must be made within a certain time provided it is made within the time a warrant can be ordered to be issued at any time. The fact that no time limit is prescribed for the issue of a warrant suggests that the Legislature expected sometime to elapse between the making of an application and the issue of a warrant and this lapse of time could be expected only if an enquiry was implied.

Finally, the provision in Sub-section (6) to Section 488 that all evidence under this-Chapter shall be taken in presence of the husband, makes it clear that a notice should be given to the husband and an enquiry should be made in his presence before issuing a warrant. The Magistrate must have evidence to satisfy himself that a warrant should be issued.

It must be proved that the husband was ordered to pay the maintenance allowance, that he failed to comply with the order and that his failure was without sufficient cause; the wife must adduce evidence to prove these facts and since the evidence must be taken in the presence of the husband it necessarily follows that a notice should be given to him and that the enquiry should be made in his presence, unless he refuses or fails to be present.

3. In this case the Magistrate did not hold any enquiry and, therefore, the order passed by him is illegal and must be set aside. The reference is accepted, the order of the Magistrate dated 22-12-1955 is set aside and he is directed to issue a notice to the husband and then make an enquiry as suggested above before issuing a warrant for levying the amount due.