

Emperor Vs. Beni

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Court : Allahabad

Decided On : May-09-1938

Reported in : AIR1938All386

Appellant : Emperor

Respondent : Beni

Judgement :

ORDER

1. This is a criminal reference by the learned Sessions Judge of Cawnpore. It raises one short question of law whether a person, who has defaulted in payment of maintenance ordered under Section 488, Criminal P.C. can be sentenced to imprisonment for a period of more than one month where only one warrant under Sub-section 3 of the aforementioned section has been issued. An order was passed, against the applicant Beni on 7th August 1934 directing him to pay maintenance at the rate of Rs. 7 per month to his wife, Mt. Sitalia. This order was modified on 21st June 1937 when the amount was reduced from Rs. 7 per month to Rs. 5 a month. The applicant failed to comply with the order of the Court, and accordingly, on 1st July 1937 he was sentenced to six months' rigorous imprisonment under Section 488(3), Criminal P.C. On that date he was in arrears in respect of payment of maintenance for about 24 months. In revision the learned Sessions Judge of Cawnpore held that in respect that only one warrant had been issued, the applicant could not be sentenced to more than one month's rigorous imprisonment. He accordingly referred the matter to this Court for orders. On 15th

November 1937 the matter came before a learned single Judge of this Court who, in view of the decision of a Full Bench of this Court in *Queen-Empress v. Narain* (1887) 9 All. 240, which he considered to be unsound, referred it for consideration by a larger Bench. We are satisfied that the decision in *Queen-Empress v. Narain* (1887) 9 All. 240 cannot be regarded as sound law. In his judgment in that case Edge, C.J. observes:

I am of opinion that the principle enunciated in the ruling reported in 6 Mad. H.C.R. App. XXIII is applicable to a case arising under Section 488 of the present Criminal P.C. of 1882.

2. The order which was being considered by the learned Chief Justice was one under the Criminal Procedure Code of 1882. The attention of the Court however does not appear to have been drawn to the fact that the order in the Madras case was one under the Criminal Procedure Code of 1861. The question was considered in *Allapichai Ravuthar v. Mohidin Bibi* (1897) 20 Mad. 3. In that case a Bench of the Madras High Court held that the maximum imprisonment under Section 488, Criminal P.C. of 1882 where one warrant only was issued was one month for each month's arrears and if there was a balance for a portion of a month a further term of a month's imprisonment might be imposed for such arrears. The Bench did not agree with the interpretation of the section by the Pull Bench in *Queen-Empress v. Narain* (1887) 9 All. 240. Their Lordships pointed to the difference in the wording between Section 488, Criminal P.C. of 1882 and Section 316, Criminal P.C. of 1861 under which the order was passed in 6 Mad. H.C.R. App. XXIII upon which Edge, C.J. relied. Section 316 of the Code of 1861 runs as follows:

The Magistrate may, for every breach of the order by warrant, direct the amount due to be levied in the manner provided for levying fines or may order such person to be imprisoned with or without hard labour for any term not exceeding one month.

3. Section 488 of the Code of 1882 enjoins:

The Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner hereinbefore provided for levying fines, and may sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month.

4. As is pointed out in the judgment of the Bench in *Allapichai Ravuthar v. Mohidin Bibo* (1897) 20 Mad. 3, the change in the wording is significant. The introduction of the words for the whole or any part of each month's allowance' is vital. If it be held that Magistrates can impose a term of imprisonment for only one month under Section 488, these words which the Legislature added in the Act of 1882 would be unmeaning. Section 488 of the present Criminal P.C. of 1898 is in the same terms as Section 488, Criminal P.C. of 1882. We are satisfied after a consideration of the terms of the section that the intention of the Legislature was to empower the Magistrate after execution of one warrant only to sentence a person, who has defaulted in the payment of maintenance ordered under Section 488, Criminal P.C. to imprisonment for a period of one month in respect of each month's default and that the section does not enjoin that there should be a separate warrant in respect of each term of imprisonment for one month. In other words, where arrears have been allowed to accumulate, the Court can issue lone warrant and impose a cumulative sentence of imprisonment. We would observe that the decision in *Allapichai Ravuthar v. Mohidin Bibi* (1897) 20 Mad. 3 has been followed in a number of other cases in *Bhiku Khan v. Zahuran* (1898) 25 Cal. 291, *Emperor v. Sardar Muhammad* (1935) 22 A.I.R. Lah. 758 and *Emperor v. Budhu Ram* (1919) 6 A.I.R. Lah. 50. We would remark further that the warrant of imprisonment under Section 488, Criminal P.C. the form of which is to be found in Schedule 5, No. XL, contemplates a sentence of more than one month's rigorous imprisonment in the case of a person who has defaulted in payment for more than one month. The warrant runs:..and whereas it has been further proved that the said (name) in wilful disregard of the said order has failed to pay rupees being the amount of the allowance for the month (or months) of.... And thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment in the said jail for the period of....

5. We therefore hold that in the case of a default in payment directed by an order under Section 488, Criminal P.C., the Magistrate seised with the case may issue one warrant and thereafter pass a sentence of imprisonment of one month in respect of each month or part of a month for which there has been default in payment. In the result we reject the reference and direct that the record be returned.

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