

**Rajpati Vs. Deoli**

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**SooperKanoon Citation :** [sooperkanoon.com/477382](http://sooperkanoon.com/477382)

**Court :** Allahabad

**Decided On :** Jun-04-1924

**Reported in :** (1924)ILR46All877

**Judge :** Boys, J.

**Appellant :** Rajpati

**Respondent :** Deoli

**Judgement :**

**Boys, J.**

1. This is a reference by the Sessions Judge of Benares recommending this Court to quash the order of the Joint Magistrate of Benares ordering the accused in the case, Eajpati, to pay a monthly allowance of Rs. 8 to Musammat Deoli, the applicant in a case under Section 488 of the Code of Criminal Procedure. It appears that on the 15th of November, 1922, the husband got a decree against the wife for restitution of conjugal rights. The Magistrate in this case was asked by the wife to give her an order for maintenance unrestricted by any condition that she should live with him. The order actually passed by the Magistrate does not expressly free her from any condition. But it was clearly intended so to do, in that the Magistrate says that he thinks "she is quite justified in refusing to live with him" and then goes on to give her an order. That order; he was entitled to make, under the proviso to Clause (3) of Section 488 of the Code of Criminal Procedure, under

ordinary circumstances. The learned Sessions Judge remarks that he would consider the Magistrate's order justified if the matter were res integra. But he considers that the decree passed on the 15th of November, 1922, was binding on the Magistrate. It seems to me that the weight to be attached to a decree must depend upon the particular circumstances of the case and that no hard and fast rule can be laid down either that a decree of a civil court is for ever and aye binding on the Magistrate or that his discretion is never fettered. It is clear that if the decree had only been passed the day before, it would require something very strong indeed to justify a Magistrate in ignoring it. It is equally clear that if it had been passed 20 years before and the woman had yearly endeavoured to get her husband to allow her to live with him and he had driven her out, with blows, the Magistrate could not possibly be expected to hold himself bound in any way by the terms of that decree. Now, in this case, the decree was passed some 13 months before. She made her application on the 11th of January, 1924. It is equally clear from her own evidence, which I have had read to me, that after the decree she was taken to her husband's house and was driven out from there with blows. In other words, she was so ill-treated when there that she had to go. The truth of this evidence is confirmed by Damri, the Chaudhri of the caste, who says that he and others had to go to the husband's house at the request of the husband's mother in order to bring the applicant, Musammat Deoli, away because there were constant rows and she was being ill-treated. Under the circumstances, it appears to me that the Magistrate was justified in exercising his discretion in favour of the woman and in favour of absolving her from the condition that she must live with her husband. In fact, any other order would simply amount to this that the husband can first get a decree for restitution of conjugal rights and then turn his wife out without an allowance at all. Let the reference be returned.