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Court : Allahabad

Decided On : Jul-03-1952

Reported in : AIR1952All958

Judge : Bind Basni Prasad, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 488; Hindu Married Woman's Right to Separate Residence and Maintenance Act, 1946 - Sections 2

Appeal No. : Criminal Revn. No. 329 of 1951

Appellant : Ram Khelawan

Respondent : State Through Mt. Parbhu Devi

Advocate for Def. : A.K. Kirty, Adv.

Advocate for Pet/Ap. : S.N. Misra, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Bina Basni Prasad, J.

1. This is a petition in revision by a husband against his wife for the setting aside of an order granting her a maintenance allowance of Rs. 25 per month under

Section 488, Criminal P. C. The applicant is an employee in an industrial concern at Kanpur, having an income of Rs. 80 per month. Admittedly, he was married to Smt. Prabhu Devi in the year 1945. A deed of agreement, Ex. P-1, was drawn up at that time by which the applicant undertook that after the marriage he would live with his wife at the house of his father-in-law. It is clear from that agreement that the assurance given was that the wife would never be compelled to go to her husband's place. It may be noted here that she is the only child of her father. For some years the husband and the wife lived amicably and a child was born to them. But estrangement and ill feelings grew up with the result that the husband has now left his father- in-law's place and is living with his brothers. He is giving no money to his wife for her support or for the support of the child. In these circumstances she came up under Section 488, Criminal P. C, for the grant of maintenance allowance for herself and for her child.

2. It was contended by the applicant that he was minor at the time of the deed of agreement, EX. P-1, was drawn up and that he is not bound by its terms. It may be stated here that the evidence on the record shows that the applicant was a minor on the date of execution of the deed, EX. P-1. The deed may have thus no legal binding force. Nevertheless, from the evidence on the record it is clear that the parties understood at the time of the marriage that the bride will never be required to go to her husband's place. The applicant's brothers also took part in his marriage and although they are no party to the deed of agreement, it must be held that they also gave the same assurance to Prabhu Devi's father. The learned Magistrate summed up his views in the following words :

'From the fact that having secured a permanent job in a Mill through the influence of Pahari, who is in the employment of an European Mill Manager, Ram Khelawan is now independent of his father-in-law and wants to enjoy his income without contributing anything towards his wife and child.

Mt. Prabhu Devi, who is a patient most probably of bone T. B. is nervous and if under the circumstances she does not like to live apart from her parents or if her father, out of love for his only daughter, does not want to separate her from him there is lot of justification in these wishes of the daughter and her father.

Considering all the circumstances of the case I am of the opinion that if the husband has lost all love for his wife and does not like to live with her in her father's house he should pay her maintenance for herself and for the child out of his income which is Rs. 80.'

3. Learned counsel for the applicant has con-tended that a wife is not entitled to maintenance allowance if she does not live with her husband. I am unable to agree with this contention. The proviso to Sub-section (3) of Section 488, Criminal P. G. runs as follows :

'Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.'

Sub-s. (4) of that section further provides:

'No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if they are living separately by mutual consent. '

4. It is clear from the above that where a wife proves just grounds for her living apart from her husband then, even though she may not be living with her husband, she can be granted maintenance allowance under Section 488, Criminal P. C. The whole question, therefore, is whether or not there is any just ground for Prabhu Devi to live apart from her husband. In this connection I may refer also to the Hindu Women's Eight to Separate Residence and Maintenance Act, 1946 (Act XIX [19] of 1946). Section 2 of that Act enumerates the grounds upon which a Hindu married woman is entitled to separate residence and maintenance from her husband. After specifying six such grounds the seventh ground is that if any 'justifiable cause'' is established then a Hindu married woman is entitled to separate residence and maintenance.

Learned counsel has relied upon Tikait Mon Mohini Jemadai v. Basanta Kumar Singh, 28 Cal. 751. That was a civil suit for the enforcement of conjugal rights and

it was held that :

The duty imposed upon a Hindu wife to reside with her husband, wherever he may choose to reside, is a rule of Hindu law and not merely a moral duty.

Further, it was held that:

An ante-nuptial agreement on the part of the husband that he will never be at liberty to remove his wife from her parental abode, would defeat that rule of Hindu law, and is invalid on that ground, as well as on the ground that it is opposed to public policy.

The first point to be noted is that in the present case the maintenance allowance was granted under Section 488, Criminal P. C. and not by a decree of any civil Court. When the proceeding is under Section 488, Criminal P. C. then the terms of that section must be looked to, and, as already indicated above, the section does contemplate the grant of maintenance allowance to a wife even when she resides separately from her husband provided she can show any justifiable cause. The same conclu-sion flows from the Hindu Married Women's Eight to Separate Residence and Maintenance Act, 1946. Tikait Mon Mohini's case has lost its force by the enactment of the Hindu Women's Eight to Separate Residence and Maintenance Act, 1946.

5. The learned Magistrate had discretion to grant maintenance allowance and it cannot be said that he has exercised that discretion arbitrarily. Here is a case where with open eyes the applicant married himself with Prabhu Devi undertaking that she would be allowed to live with her father and he would live with her. She has now fallen ill and he has now deserted her. The discretion has been exercised by the learned Magistrate judicially.

6. I see no force in this revision and dismiss it.

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