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Tulsiram Dewaji Vs. Smt. Narbadabai

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Court : Madhya Pradesh

Decided On : May-29-1957

Reported in : AIR1958MP255; 1958CriLJ1188

Judge : T.P. Naik, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 488 and 488(8)

Appeal No. : Criminal Revn. No. 410 of 1956

Appellant : Tulsiram Dewaji

Respondent : Smt. Narbadabai

Advocate for Def. : D.S. Mulary, Adv.

Advocate for Pet/Ap. : J.A. Khare, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

T.P. Naik, J.

1. Non-applicant Narbadabai on 9-8-1855 filed an application in the Court of the Magistrate, 1st Ciass, Jabalpur, under Section 428 of the Code of Criminal Procedure claiming maintenance from her husband Tulsiram, the applicant, inter

alia on the ground that they last resided together at Jabalpur in the house of her parents for the period 30-10-1954 to 20-12-1954 and that he had neglected and refused to maintain her as his legally married wife.

On 17-10-1955 the applicant raised a preliminary objection to the maintainability of the application on the grounds that he was a resident of Wardha, that he never resided with the non-applicant at Jabalpur or at any place within the jurisdiction of the Court and that even on the averments contained in the petition of the non-applicant, it cannot be said that he last resided with the non-applicant at Jabalpur within the meaning of Section 488(8) of the Code of Criminal Procedure. The objection was overruled by the trial Court and the Sessions Judge. Jabalpur, in revision maintained its order.

2. It is now contended that on the averments contained in the petition for maintenance, it cannot be said to have been prima facie established that he resided with his wife at Jabalpur within the meaning of Section 488(8) of the Code of Criminal Procedure to give jurisdiction to the Court at Jabalpur to enter in the application.

3. The necessary averments so far as relevant for the purpose of this revision petition contained in the petition for maintenance are that she was married to the applicant at Nagpur on 18-5-1954, that thereafter from 23-5-1954 up to October 1954 she stayed with her husband in the house of her parents-in-law in mohalla Ramnagar, Wardha, that during this period she was very cruelly treated by her husband and the reason for the aforesaid cruel treatment was that he had been coercing her to arrange from her parents a sum of Rs. 2000/- for being paid to the applicant, that on 30-10-1954 the applicant and the non-applicant came to Napier town, Jabalpur and started residing with her parents, that they continued to reside together at her parents' house at Jabalpur right up to 20-12-1954, that during this period he made visits to Katni, Agra and Dehradun for short durations and returned from those places to Jabalpur where he continued to reside with her till 20-12-1054, that thereafter he left her at Jabalpur and never came back to her nor took her to him from her parents' house.

4. It would thus be seen that the Jabalpur visit of the applicant-husband was for a period of about seven weeks and that though during this period he went to three places, every time he returned to Jabalpur where he stayed with his wife. The question therefore arises whether in staying with his wife at the house of her parents at Jabalpur for the period ,30-10-1954 to 20-12-1954 he can be said to have 'last resided with his wife' at Jabalpur within the meaning of Section 488(8) of the Code of Criminal Procedure.

5. According to the Oxford Dictionary, the word 'reside' means 'to dwell permanently or for a considerable time; to have one's settled or usual abode; to live in or at a particular place.' The expression is thus not confined to permanent residence alone. It has also been held in several cases that the expression 'resided' appearing in the section is wide enough to cover temporary as well as permanent residence. See Sampoornam v. N. Sunderesan, AIR 1953 Mad 78 (A), Mrs. p. H. Jolly v. St. John William Jolly, AIR 1918 Cal 785 (B), Charan Das v. Mt. Surasati Bai, AIR 1940 Lah 449 (C), and Balkrishna Naidu v. Sakuntala Bai, AIR 1942 Mad 666 (D). There is no substance in the contention that as the applicant-husband did not dwell with his wife permanently at Jabalpur, he cannot be said to have last resided with her there.

6. The learned counsel for the applicant relies upon the class of cases which decide that casual visit or flying visit to a place would not constitute residence for purposes of conferring jurisdiction under Section 488 of the Code of Criminal Procedure.

But here it cannot be said that the residence of the applicant-husband with the parents of his wife at Jabalpur was of such a casual, or flying nature as to deprive the Court at Jabalpur of jurisdiction to entertain her application. What would constitute 'residence' within the meaning of Section 488 of the Code of Criminal Procedure would depend on the facts of each case.

It is neither permissible nor possible to fix any period of time which would raise an inference of a residence sufficient to attract the jurisdiction of the Criminal Procedure Code under Section 488. As observed by a Division Bench of the Sind Judicial Commissioner's Court in Gangabai v. Pamanmal Lachman, 40 Cri LJ 117

at p. 118: (AIR 1938 Sind 223 at p. 223) (E);

'Where there is something more than aflying visit, where a man leaves his house andresides for some time in the house of his parents-in-law with his wife, that is a sufficient residence within the meaning of Sub-section (8) of Section 488, Criminal Procedure Code. Reference may be made to the case in Sama Jetha v. Bai Wall, ILR 54 Bom 548 : (AIR 1930 Bom 348) (P) and to the case in Sher Singh v. Amir Kunwar, ILR 49 All 479: (AIR 1927 All 291) (G). Sub-section (8) does not necessarily refer to permanent residence. It refers also to temporary residence. The word 'residence' of course implies something more than a mere brief visit, a mere flying visit. It suggests a certain continuity, but if there be a continuity for such a period of time as to allow it fairly to be said that the husband did reside even for a matter of some weeks with his wife, it does not appear to us that the section should be so strictly construed as to deprive the woman, who often in these cases is helpless, of assistance from the Court which is most easily accessible to her.'

I agree with the aforesaid observations of the Sind Court and in my opinion on the facts alleged and prima facie proved on the affidavit of the non-applicant, it cannot be said that the residence of the parties at Jabalpur was a mere flying visit, or a casual visit of so brief a natureas not to bring the petition of the non-applicant within the provisions of Section 488 of the Code ofCriminal Procedure.

7. The application in revision is therefore rejected.

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