

Daulat Ram Vs. Sukhi

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Court : Delhi

Decided On : Nov-18-1969

Reported in : 6(1970)DLT393

Judge : Prakash Narain, J.

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

Appeal No. : Criminal Reference Appeal No. 9 of 1968

Appellant : Daulat Ram

Respondent : Sukhi

Advocate for Pet/Ap. : K.C. Pandit and; B. Sita Ram, Advs

Judgement :

Prakash Naraia, J.

(1) Ln proceedings under Section 483 Criminal Procedure Code, initiated by Smt. Sukhi against her husband Daulat Ram, the latter had been ordered to pay a monthly allowance as maintenance to his wife at the rate of Rs. 80 per mernsem with effect from 6 6-1967. It appers that io spite of these orders Daulat Ram did nto pay the maintenance allowance to his wife. Accordingly on 31-10-1968 Smt. Sukhi moved an application under section 488(3) Criminal Procedure Code, complaining about her husband nto paying the maintenance allowance which till

then had accumulated to Rs. 1300 and prayed that the amount of maintenance be realized by issue of warrants of attachment or by passing of orders of imprisonment against Daulat Ram. This application came up before the Magistrate first Class, Theog who passed the following order:-

'PRESENTED by the petitioner with counsel. Be entered. The warrant of attachment be issued and report to come up on 26-11-1968.'

(2) On the date fixed, that is, 26-11-68, both the petitioner, Smt. Sukhi and the respondent Daulat Ram were present but the Magistrate noted that warrants of attachment had not been issued and so he ordered afresh that the warrants of attachment be issued. In the proceedings of that day after passing the order regarding fresh issue of warrants of attachment, he recorded that Daulat Ram wanted time to file an appeal which was not allowed. Thereafter there were a number of hearings and finally the Magistrate passed an order on 15-3-1969 that as Daulat Ram had failed to make payment of Rs.1300 towards maintenance allowance to Smt. Sukhi despite his giving several opportunities to pay this amount, he be sentenced to imprisonment for a term of 16 months or until payment if it is made earlier. Against this sentence Daulat Ram went up by way of revision to the Sessions Judge, Mahasu, who has made reference to this Court recommending that the order of the Magistrate be set aside and the revision be accepted.

(3) Mr. K C. Pandit, learned counsel for Daulat Ram, has submitted that the recommendation of the learned Sessions Judge should be accepted and the sentence against Daulat Ram be quashed. Bakshi Sita Ram learned counsel for Smt. Sukhi, has, however, urged that the recommendations should not be accepted and the revision petition filed by Daulat Ram should be dismissed upholding the orders of the Magistrate. In my opinion, this reference has to be accepted and the impugned order of the Magistrate has to be quashed as it is patently against law. No opportunity has been given by the Magistrate to Daulat Ram to show cause why he has not complied with the order of maintenance passed against him and in consequence, why warrants of attachment or sentence of imprisonment be not passed against him.

(4) Bakshi Sita Ram's contention is that Daulat Ram took several opportunities from the Magistrate to pay up the amount but failed to pay the same and no further opportunity was to be granted to him to show cause. According to him section 488 (3), Criminal Procedure Code, does not envisage any opportunity to be given to the husband for showing cause and that if maintenance allowance is not paid in spite of the husband taking time to pay the same the Magistrate is competent to pass orders regarding attachment of the property of the husband or awarding his imprisonment or both. It would be advantageous hereto read section 488 (3), Criminal Procedure Code, which is in the following terms:- (3) Enforcement of order'.- if any person so ordered failed without sufficient cause to comply with the order, any such Magistrate, may for every breach of the order, issue of warrant for levying the amount due in 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 or until payment if sooner made: 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. If a husband has contracted marriage with another wife or keeps mistress it shall be considered to be just ground for his wife's refusal to live with him: Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it is due.'

(5) A mere reading of section 488 (3), Criminal Procedure Code, would show that before a Magistrate passes any order in respect of attaching the property of the husband or imprisoning him, an opportunity must be given to him to show cause why he had not complied with the earlier order of maintenance passed against him. There can be several reasons why a person may not comply with an order passed under section 488 (1), Criminal Procedure Code, and some of them are enumerated in sub-sections (4) and (5) of section 488, Criminal Procedure Code. In our system of jurisprudence no man can be deprived of his liberty or property except in due course of law. Apart from the constitutional guarantees available to

every person living in this country in respect of his person and property the Code itself contemplates that an alleged erring husband shall not be deprived of his property or his liberty without an opportunity to show cause why such an order be made. I cannot attach any other meaning than this to the opening words of sub-section (3) of section 488 of the Code which specifically lay down that if any person ordered to pay maintenance fails without sufficient cause to comply with that order, a Magistrate may for every breach of the order issue a warrant levying the amount in the same manner as for levying fines and may sentence such person also to imprisonment

(6) Bakshi Sita Ram learned counsel for Smt. Sukhi, placed great reliance on a Full Bench decision of the Bombay High Court in *Karson Ramji Chawda v. The State of Bombay*. The decision in that case, however, has no relevance to the facts of the present case. All that the Full Bench decided in the case was that Sub-section (3) of section 488 confers upon the Magistrate two independent powers, one to issue a warrant which has to be executed in the manner laid down in the sub-section and that the power of the Magistrate to sentence the person failing to comply with the order is not dependent upon the issue of the warrant, or in other words the issue of the warrant is not a condition precedent to the jurisdiction of the Magistrate to sentence the defaulting husband. Their Lordships were not concerned with the proposition in this case which is that the warrant as well as the sentence has been passed without affording any opportunity to the husband to show cause why he defaulted in paying the maintenance. The other cases on which the learned counsel relied were a decision of the Allahabad High Court reported in *Emperor v. Beni*. And a decision of the Nagpur High Court reported as *Emperor v. Budhoo Mandal* and'. These cases also have no bearing on the proposition with which I am concerned in this case.

(7) Chapter xxxvi of the Code of Criminal Procedure is a self-contained one and the reliefs given under it are essentially of a civil nature. It prescribes a summary procedure for compelling a man to maintain his wife and children as was observed by their Lordships of the Supreme Court in *Nand Lal Misra v. K L Ufira*. All evidence as contemplated in proceedings under Chapter xxxvi of the Code of Criminal Procedure is to be taken in the manner set out in sub-section (6) of section 488,

Criminal Procedure Code. An erring husband or father who fails to comply with the orders passed under section 488, Criminal Procedure Code, is liable to have a warrant issued against him or be imprisoned if he fails to show cause why he had not complied with the order made against him for payment of maintenance. This contingency can only happen if the erring husband or father is given an opportunity to put forward his case explaining why he had failed to comply with the order of maintenance and if necessary adduce evidence in that behalf, which if done has to be recorded in accordance with the procedure laid down. It is abundantly clear on the reading of the record of the present case that the order to issue the warrant and the subsequent order sentencing Daulat Ram were passed without first issuing notice to him or holding any inquiry. The surest way of ensuring that the husband had been afforded an opportunity to show cause before the order for the issue of warrant is made is by issuing him a notice to show cause why an order be not made issuing warrant or passing sentence. The Magistrate must have evidence to satisfy himself before he issues a warrant or passes a sentence. An order issuing warrant or passing sentence without first issuing notice and holding an inquiry is illegal. I am fortified in coming to this conclusion by a decision of the Allahabad

(8) Unless a notice to show cause is issued to the earning husband or father he would be denied an opportunity to explain why he has not complied with the order of maintenance. The Magistrate cannot proceed to enforce the order if the husband proves that he has got sufficient reason for his failure to comply with the order of maintenance. The husband can plead as sufficient cause in the enforcement proceedings that his wife has been living in adultery since the date of the order and that would be sufficient cause for noncompliance as it is not necessary for the husband to get the maintenance order cancelled by a separate application before pleading in the enforcement proceedings that his wife is living in adultery. The husband, of course, is not entitled to reopen the question of the grant of maintenance but any factor which may justify non-payment of maintenance subsequent to the passing of the original order can be pleaded by him. This can only be done if he gets an opportunity to do so. In the present case no such notice was ever given and so the statutory right given to the husband to show cause has been denied to him. This will make the entire proceedings of the Magistrate illegal

as was observed by the Mysore High Court in the State of Mysore v Shivshaukar Mruigeppa Mamdapur A similar view was also taken by the Punjab High Court in Criminal Revision No. 698 of 1954 (Jangir Singh Bhan Singh v. State) decided on 4-2-1955.

(9) The result of the above discussion is that the order of the Magistrate passed on 15-3-1969 sentencing Daulat Ram to imprisonment and his earlier orders issuing warrants must be quashed I accordingly accept the recommendation of the learned sessions Judge and quash the orders of imprisonment and issue of a warrant passed by the Magistrate and direct that he proceed with the enforcement proceedings on the application of Smt. Sukhi in accordance with law by first issuing a notice to Daulat Ram to show cause why he had failed to comply with the order under section 488(1), Criminal Procedure Code, passed against him and then holding an inquiry and passing appropriate orders.

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