

**Satya Narain Vs. Jamna Devi**

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**Court :** Delhi

**Decided On :** Jul-13-1971

**Reported in :** 1971CriLJ1789; ILR1971Delhi81

**Judge :** P.S. Safer, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 488

**Appeal No. :** Criminal Revision Appeal No. 113 of 1971

**Appellant :** Satya Narain

**Respondent :** Jamna Devi

**Advocate for Pet/Ap. :** K.K. Sud, Adv

**Judgement :**

**P.S. Safer, J.**

(1) This petition is directed against an order dated the 22nd of February, 1971, made by an Additional Sessions Judge, Delhi. It is urged that the respondent had never applied for obtaining any maintenance for her children and that the learned Additional Sessions Judge fell into an error in concluding that the maintenance had been allowed for the respondent the wife and the children. Mr. Sud is justified in raising that contention.

(2) A perusal of the order made by the trial court as well as of the petition preferred under section 488 of the Code of Criminal Procedure makes it clear that Jamna Devi respondent claimed maintenance only for herself and not for the children. In the petition she has stated in paragraph 5 :-

'THE respondent can easily pay a sum of Rs. 400.00 towards maintenance expenses easily to the petitioner, who has been made the victim of callous negligence and carelessness and who is not able to maintain herself and her children for whose maintenance she is filing a separate petition.'

A consideration of paragraph 7 of the petition also bears out that Jamna Devi had filed the application for having maintenance for herself alone.

(3) The learned counsel for the petitioner contends that in view of the agreement Exhibit P. 1 maintenance beyond the amount mentioned therein could not have been granted. He relies on sub-section 14) of section 488 of the Code of Criminal Procedure (hereafter called 'the Code') :-

488.(4) 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 refuses to live with her husband, or if they are living separately by mutual consent.'

The learned counsel places reliance on the ultimate part of the provision, quoted above. He submits that the agreement Exhibit P. 1 establishes that the parties to this litigation have been living separately by mutual consent. This argument does not hold water when it is examined in the light of an overriding clause contained in the agreement Exhibit P. I, which is :-

'WHEREAS the parties to this agreement being husband and wife married in 1955 having three children of 5, 4, 11/2 ages are not on good terms and are having certain disputes which have broken the concord and the peaceful family atmosphere.'

It is quite clear that within live years of the marriage, while Jamna Devi had given birth to three children in that short period, the matrimonial relations between the parties so deteriorated that they were drive to record that they were not living on

good terms and were having certain disputes which had broken their concord. They had to start the agreement by stating that peaceful family atmosphere did not exist. It is true that no details were given but then none were necessary for the purposes of drafting such a document as Exhibit P. 1. Where it is clearly shown by a document that it is the outcome of a serious acrimony designing the matrimonial relations, the document cannot be pleaded to obtain the benefit of sub-section (4) of section 488 of the Code. The learned counsel for the petitioner has cited *Sm. Chameli v. Gajraj Bahadur Gupta* : AIR1954 All33 , which is, according to him, an authority for correctly interpreting the words 'mutual consent' used in sub-section (4) referred to above. The High Court there observed:-

'THE words 'mutual consent' mentioned in section 488 (4) would apply to separate living if such separate living was the result of a desire of both parties and mere agreement to pay maintenance or to live separate would not bar an application under section 488 of the Code.'

(4) Mr. Sud asserted that the courts below (the only court being the trial court) having failed in accurate appraisal of evidence, injustice had resulted to the petitioner. Although ordinarily it is not for this court to go into evidence while exercising jurisdiction under section 439 of the Code, I allowed the indulgence to the counsel to read out the evidence of the respondent Jamna Devi who was examined as P. W. 4 and partly the evidence of D. W. 2 who is the petitioner before me. Jamna Devi's statement was read out in detail. She had alleged in her examination-in-chief that she was beaten by the petitioner on several occasions. In the course of the cross-examination she stated that she was beaten sometimes by the petitioner behind closed doors. She asserted that the petitioner held out the threat that if she disclosed to anybody that she had been beaten, she would be killed. The appraisal of evidence sufficiently establishes that the respondent was maltreated during the course of the five years when she was yielding to the sexual desire of the petitioner any number of times leading to the birth of three children. There was no justification for the petitioner to maltreat the wife. The agreement between the parties brought about by Exhibit P. 1, as I have held out earlier, would not be the anchor sheet for any submission to obtain any benefit of sub-section (4) of section 488 of the Code. The Allahabad High Court indicated that the mutual

consent would be there within the meaning of that provision if the separate living was the result of a desire of both the parties. Such a desire would be a voluntary desire relating to the particular circumstances which may be prevailing between the parties. The High Court, in the judgment referred to above, proceeded to make it clear that mere agreement to pay maintenance or to live separate would not be a bar to an application under section 488 of the Code. The citation gives no benefit to the petitioner.

(5) The second case cited before me is Sham Singh v. M.t. Hakam Devi Air 1930 Lah 524. The High Court there was dealing with a reference. The provisions of sub-section (4) of section 488 of the Code were not discussed in any detail. The judgment gives no light which may be of any consequence in the instant case. The learned counsel then has cited Rum Chand Saudagar Ram v. Jiwan Bai, . The observation made in that case was:-

'THE test to find out whether the husband and wife are living apart by mutual consent is to see whether the agreement of separate living and payment of maintenance was the outcome of the desire of both parties independently reached by them or if one of the parties was forced by the circumstances to submit to such agreement. Thus where a wife refused to live with the husband on some special ground, such as cruelty, or the fact that he is keeping another woman or has remarried, it cannot be said that the husband and wife are living apart by mutual consent. Nor does the fact that the wife's application under the section was compromised by the husband agreeing to pay a certain amount as maintenance for her would make the section inapplicable or could have the effect that it could no longer be said that the husband was neglecting or refusing to maintain the wife.'

All that I can say is that Mr. Sud has fairly assisted me by citing a case which goes against the petitioner. It is expressly laid down in the case referred to above, that if the parties are forced by the circumstances to submit to an agreement to live apart then such an agreement would not be an agreement covered by the words 'mutual consent' used in sub-section (4) of section 488 of the Code. It was also observed that where the wife refuses to live on the ground of cruelty it could not be said that

the parties were living apart by 'mutual consent'.

(6) The last case cited is Ramsashi Mondal v. Nirode Barani Dasi : AIR1948 Cal186 . It was observed in that case :-

'IN a previous proceeding under section 488 the husband denied that the petitioner was his wife and that he would not keep her. The proceedings were, however, dropped as a result of compromise under which the wife consented to give up her claims to live with her husband in lieu of a certain sum of money. Since then the parties lived apart. Held that the parties were living separately by mutual consent and therefore, s. 488(4) was a bar to the wife being granted any allowance on a subsequent application under section 488.'

The citation falls wide apart and bears no relationship to the case in hand. In this case there was no previous application under section 488 which having been compromised the parties may be said to be living apart and bound by their actions so performed. In the case before the Calcutta High Court the proceedings initiated by the wife under section 488 of the Code were dropped in terms of a certain compromise. Here the respondent has been all along insisting that she has suffered cruelty at the hands of the petitioner and has maintained her three children on her own and is not being given any maintenance. She has raised the grievance that even the sum of Rs. 50.00 which was agreed to be paid in terms of the agreement Exhibit P. 1 was not paid in accordance therewith. None of the cases cited before me helps the petitioner.

(7) The last contention raised on behalf of the petitioner has some substance. Mr. Sud submits that after deducting the various amounts from the salary the petitioner gets only Rs. 210.00 per month and it is unjust that he should be called upon to pay Rs. 100.00 every month to the wife. Considering every aspect of the matter I am persuaded that the maintenance at Rs. 75.00 per month would be appropriate. This will be the quantum of maintenance payable to the respondent in consequence of the application by which the proceedings under section 488 of the Code were initiated. It will be payable from the date of the application. With this modification the petition is dismissed.

