

Queen Empress Vs. Mannatha Achari

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Court : Chennai

Decided On : Oct-27-1893

Reported in : (1894)4MLJ83

Appellant : Queen Empress

Respondent : Mannatha Achari

Judgement :

Muthusami Aiyar, J.

1. The term 'adultery' in Section 488, Criminal Procedure Code, must be construed with reference to its definition in Section 497 of the Indian Penal Code. There is no finding in the present caso that the concubine is a married woman and the Joint Magistrate seems to suppose that every illicit connection with a woman whether she is marriel or not, and whether, i married, with her husband's consent or connivance or not, is adulterous. This view cannot be accepted as the legal conception of adultery, and the ground on which the Joint Magistrate rests his decision cannot be supported without further enquiry. The complainant stated in her evidence that her husband insisted on her getting her meals from the concubine and it was held in Criminal Revision Case No. 118 of 1888, (Marakkal v. Kandappa I. L. R 6 M 371 that the offer to maintain must bo an offer to maintain with the consideration due to her position as wife. A question may, therefore, arise if the complaint is well-fcunded whether the offer made is sufficient within the

meaning of the proviso of Section 488, (see also Criminal Revision Case No. 517 of 1881). In his explanation to the District Magistrate the Joint Magistrate states that he has never followed the ruling of the High Court in Criminal Revision Case No 547 of 1884 because, in his opinion, it is directly opposed to the wording of the section and has always seemed to him unintelligible. I would here point out to the Joint Magistrate that it was his duty to have either followed the ruling of the High Court, or if he doubted its correctness, to have referred the matter to that court for reconsideration. There may be causes in which the husband may not bring the concubine into the family house or may arrange for the concubine not coming into contact with his wife and for the society of the former not being forced on the latter. I am not prepared to hold that either the husband's immorality which does not amount to adultery or involve the degradation of a married woman being brought into the society of a concubine, is sufficient ground for the wife's refusal to live with her husband. I would set aside the order of the Joint Magistrate and direct him to rehear the case and pass fresh orders with reference to the foregoing observations.

Best, J.

2. It seems to me to be very doubtful if the framers of R. 488 of the Code of Criminal Procedure intended the word ' adultery' as used therein to have the limited meaning given to it in denning the offence of adultery in the Penal Code. The offence is against the husband, as is recognized in Section 199 of the Code of Criminal Procedure which prohibits the court from taking cognisance of such offence except on the complaint of the husband or of some person on his behalf. Hence, the necessity for the existence of a husband and absence of consent or connivance on his part to constitute such offence. But so far as a wife seeking an order for maintenance under Chapter XXXVI of the Code of Criminal Procedure is concerned, the wrong done to her is in no way affected by the circumstance of her husband's concubine being ' married or unmarried or in case of her being married, whether it is with or without her husband's consent or collusion that she is living in such concubinage.

3. However, any other than the limited interpretation of the word as defined in the Penal Code is impossible in the face of the concluding clause of Section 4 of the Code of Criminal Procedure, which directs that 'all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined, (and the word adultery is not one of those 'hereinbefore defined), shall be deemed to have the meanings respectively attributed to them by that Code.'

4. I concur therefore in the order proposed by my learned colleague.

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