

Bayanna Vs. Devamma

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SooperKanoon Citation : sooperkanoon.com/790443

Court : Chennai

Decided On : Apr-30-1953

Reported in : AIR1954Mad226; (1953)2MLJ522

Judge : Govinda Menon, J.

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

Appeal No. : Criminal Revn. Case No. 1289 and Cri. Revn. Petn. No. 1126 of 1952

Appellant : Bayanna

Respondent : Devamma

Advocate for Def. : S. Raghavan, Adv.;Asst. Public Prosecutor

Advocate for Pet/Ap. : Jagannath Rao, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Govinda Menon, J.

1. This is an application by a husband against the order of the lower Court, directing maintenance to be paid to his wife. The reason on which the wife claimed maintenance was that the husband married a second wife and as such she had to go away from the home of the husband to that of her parents. The lower Court has found that there is no satisfactory evidence to show that the husband beat, ill-treated and drove her away from his house. The lower Court has also found that the husband was unwilling to pay maintenance to the wife but was willing to take her back. In such circumstances the Magistrate has come to the conclusion that there was neglect and refusal on the part of the husband to maintain the wife.

2. Mr. Jagannath Rao, the counsel for the petitioner contends that whatever might be the position regarding the liability of the husband on a second marriage to pay a separate maintenance to the wife, under Section 2, Hindu Married Women's Right to Separate Residence and Maintenance Act, which came into operation on 23-4-1946, under Section 488, Criminal P. C., there must be a positive evidence of neglect or refusal to maintain a wife. Since in this case, the learned Magistrate has found that the husband did not drive away the wife from his house and did not beat her, it must be held that the provisions of Section 488, Criminal P. C. have not been complied with. The short answer to this argument of the learned counsel is that under Section 2 Hindu Married Women's Right to Separate Residence and Maintenance Act when the husband takes a second wife, the first wife is entitled under the law to live separately and claim separate maintenance. So her residing separately is legal and once she resided separately the duty of the husband is to give her separate maintenance and in this case there is a clear admission by the husband that he has refused to maintain the wife. In these circumstances I am not prepared to accept the argument of the learned counsel.

3. The criminal revision case is dismissed.