

**Pachiammal Vs. Perumal**

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**Court :** Chennai

**Decided On :** Jul-24-1963

**Reported in :** 1964CriLJ105

**Judge :** Kunhamed Kutti, J.

**Appellant :** Pachiammal

**Respondent :** Perumal

**Judgement :**

ORDER

**Kunhamed Kutti, J.**

1. This revision case is against the order of the Additional; First Class Magistrate II, Salem, dismissing the petitioner's application M.C. No. 128 of 1960 Under Section 48tt 488 CrI. P.C., for maintenance for herself and her two children. The respondent (husband) contested- the petition on the ground that the petitioner has committed adultery with his father, that is, the petitioner's father-in-law. It would appear that the respondent and his father have not been on good terms with each other. The evidence is that he had been driven out from the house by the father along with his mother, according to the respondent, some three months after his marriage, but according to the petitioner, some seven or eight years after the marriage, which is said to have taken place about 15 years ago. The two children are stated to be aged 13 and 11 and they were said to have been born while the

petitioner and respondent lived -in the father's house as husband and wife. Ex. D.I is an extract from the Birth register relating to the second child. He was art on 1-5-1949, and according to the entries in Ex. D-1, i the information about his birth was given to We village officer by Perumal Gounder, the respondent. He Has no doubt denied that he furnished the information, but he has hot chosen to examine the person who made the entries In Ex. D-I to substantiate the denial. The evidence of the petitioner and her two witnesses shows that the respondent i has taken a second wife and is living with her. The respondent would have it that because his father misconducted himself with his wife, the petitioner, he protested against it, and on his protest, he and his mother were sem way by his father and the petitioner continued to live with the father, The petitioner Is now living with her family. The address giving by her in the petition is Kolinjipatti village which is said to be her parents' village. But we are now concerned with the question whether the alleged immorality Is true and even if true, it is of such a nature as court defeat the petitioner's claim for maintenance Under Section 48 Crl. P.C.

2. The evidence on the side of the respondent regarding the alleged immorality of the petitioner is of a vague nature. R.W. 3 lives in Kamanaickenpatti and it is not clear from his evidence what the source of his information is regarding the petitioner's living with the respondent's father 33 his concubine. R. W. 2 is no doubt a resident of Naickerpettai and his evidence is that some three months after her marriage with the respondent the petitioner started living in illicit intimacy with Marimuthu, the father of the respondent. Here again, the source of his information has-not been disclosed. R. W. 1 is the respondent. He has asserted that his father had been living with the petitioner In adultery. The petitioner, wile denying these imputations, has examined two witnesses who generally say that the petitioner has been living with the respondent in his father's house for about seven years after their marriage. Both the-children were born within this period and on the evidence as it now stands, it is not possible to conclude that that-children were not bom to the respondent seeing that respondent himself had reported about the birth of the second child. Further to disqualify the petitioner from her right to claim maintenance Under Section 488 it should be proved' that she has been 'living in adultery' which has been explained in more than one decision to mean more than occasional lapses from virtue. In Lakshmi Ambalam v. Andiammal : AIR1938

Mad66 Newsam J. while considering this aspect of the question Under Section 488 Cri P.C. has construed the phrase 'living in adultery' to mean something quite different from living an unchaste life, the principle being that a husband is absolved from an obligation to maintain his wife only when his wife has a de facto protector with whom she lives and by whom she is being maintained as if she were his wife.

3. In the present case, the fact that the petitioner has been living with her father-in-law is by itself no evidence of her living in a state of immorality. That has to be proved by definite evidence. Such evidence cannot be furnished by the vague testimony given by the respondent and R. Ws. 2 and 3. It seems to me, therefore that the dismissal of the petition by the learned Magistrate on the ground of petitioner's immorality cannot be upheld. The said order of the learned Magistrate is set aside and the petition is sent back to him for final disposal according to law after taking, if necessary, further evidence regarding the quantum of maintenance payable to the petitioner and her two children.

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