

Halfhide (Mr.) Vs. Halfhide (Mrs.)

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Court : Kolkata

Decided On : Apr-25-1923

Reported in : AIR1924Cal230

Appellant : Halfhide (Mr.)

Respondent : Halfhide (Mrs.)

Judgement :

1. We think that this Rule must be made absolute. The facts, shortly stated, are as follows : - On the 20th January 1919, an order was made directing the petitioner before us to pay a sum of Rs. 45 a month as maintenance allowance to his wife, who is the opposite party. Several warrants were issued for realization of the money due from the husband, but they were returned unexecuted. In December 1921, the husband was arrested, and thereupon the dues up to April 1921 were paid. Subsequently a further sum was paid some time in June 1922. The opposite party alleged that the arrears now due amounted to a sum of Rs. 870, and she accordingly prayed for the issue of a warrant against her husband. An order was made, on the 8th of February 1923 for the issue of a warrant against the husband, and thereupon the husband appeared before the Third Presidency Magistrate, Mr. Das Gupta, on the 22nd February 1923, when he represented that he had no means whatsoever to pay the maintenance to his wife, and that a protection order had been issued in his favour, under the Insolvency Act, by the Deputy Commissioner of Darjeeling. The case was adjourned, the husband being let out on bail. Later on the same day the Magistrate recorded an order to the effect that,

under the circumstances, the husband could not be arrested and could not be ordered to furnish bail. The record was, however, sent for by the Chief Presidency Magistrate, who came to the conclusion that Section 44 of the Insolvency Act was no bar to an order under Section 488 of the Code of Criminal Procedure. The Chief Presidency Magistrate thereupon gave time to the husband, till the 7th March 1923, to pay up the arrears of maintenance.

2. The petitioner states that, inasmuch as he was unable to pay the amount of arrears of maintenance, he filed a petition for being adjudicated as an insolvent before the Deputy Commissioner of Darjeeling on the 9th February 1923, and that in the schedule to his petition he entered the name of his wife as a creditor of his. He further states that on the 16th February 1923, the Deputy Commissioner of Darjeeling issued a protection order in his favour under the provisions of the Insolvency Act. The petitioner has produced before us a certified copy of the order made by the Deputy Commissioner of Darjeeling, dated the 5th April 1923, in the insolvency proceedings, from which it appears that the petitioner has been adjudicated an insolvent under Section 27 of the Insolvency Act, and that it has been directed that the order for protection of the petitioner against arrest should continue to be in force till his discharge which the petitioner was directed to apply within six months from the date mentioned above.

3. These being the facts, it is impossible for us to come to an affirmative conclusion that there was wilful neglect on the part of the petitioner to pay the arrears of maintenance to his wife within the meaning of the words Used in Section 488 of the Code of Criminal Procedure. In our opinion the fact that he has been adjudicated an insolvent is conclusive, so long as the order of adjudication stands, that the petitioner is unable to pay his debts. There is also the order of protection. It follows, therefore, that the petitioner being unable to pay his debts, is not guilty of wilful neglect within the meaning of Section 488 of the Code of Criminal Procedure. In this view of the matter, the Rule, as we have said, must be made absolute, The bail bond of the petitioner will, therefore, be cancelled.