

S.W. Colbert Vs. Mrs. H. Colbert

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Court : Kolkata

Decided On : Dec-06-1932

Reported in : AIR1933Cal776,147Ind.Cas.914

Appellant : S.W. Colbert

Respondent : Mrs. H. Colbert

Judgement :

M.C. Ghose, J.

1. In this case Mrs. Colbert made a petition against her husband stating that he had married her about 16 or 17 years ago but that lately he had treated her badly and neglected to maintain her; that he was living with another woman for the last four years and refused to maintain her; that he earned about Rs. 150 per month and she asked for a maintenance of Rs. 50 a month The husband stated in his written statement that he married her in 1917 upon her false representation, but afterwards she brought into his house her illegitimate children and a married daughter with children; and he was asked to maintain 3ll of them, and when he refused to do so he was turned out. He further stated that he was willing to maintain her but not her grown up children that although he was willing to maintain her she refused to come to him The matter was fixed for trial on a certain date when the pleader of the husband was absent and in his absence compromise petition was drawn up by the pleader for the complainant to the effect that by the

intervention of friend the husband has agreed to pay Rs. 30 per month as maintenance towards the wife. The learned Magistrate thereupon ordered that the defendant Mr. Colbert do pay Rs. 30 per month as a separate maintenance to the wife, Mrs. Colbert. The present rule was issued on two grounds, namely, (1) that the order of the Magistrate is bad in law, and (2) that the petitioner not having been a consenting party to the compromise, the case should not have been disposed of on the basis of the compromise.

2. No one has appeared to oppose the rule. The learned advocate for the petitioner has urged that the petitioner very foolishly agreed to the compromise without understanding the true import of it that in fact he did not agree to pay Rs. 30 per month to the wife for living separately from him; that his proposal was to maintain her if she lived with him; and that he is willing to maintain her if she live with him without the grown up children. The learned advocate quoted a Lahore case *Sham Singh v. Mt. Hakam Devi* A.I.R. 1930 Lah. 524 where it was laid down that wherein a proceeding for maintenance under Section 488 the parties enter into a compromise, the enforcement of the compromise comes within the jurisdiction of a civil Court and not a criminal Court; and urged that in this case the learned Magistrate should have relegated the parties to a civil Court for enforcement of the compromise and should not have incorporated it in his order. There is no opposition to the rule. It is made absolute and the order passed by the learned Magistrate is set aside.