

Dumni Vs. Saran

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Court : Himachal Pradesh

Decided On : Sep-14-1953

Reported in : AIR1954HP49

Judge : Chowdhry, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 488

Appeal No. : Criminal Revn. No. 28 of 1953

Appellant : Dumni

Respondent : Saran

Advocate for Def. : Vidya Sagar, Adv.

Advocate for Pet/Ap. : Ishwar Das

Disposition : Revision allowed

Judgement :

ORDER

Chowdhry, J.C.

1. The petitioner Mst. Dumni's application for maintenance under Section 488, Cr. P. Code, was dismissed by a Magistrate first class on 8-12-1952. She put in a fresh application on 29-12-1952 on the allegation that after the dismissal of her

first application she went to her husband's house with the object of living with him but was turned out by him on 13-12-1952 after being beaten, and that since then the husband had refused and neglected to maintain her.

2. The learned Magistrate, who incidentally was the same who had dismissed the previous application, dismissed the second application, without making any enquiry on the ground of the first application having already been dismissed and there being no fresh ground in the second application.

3. The learned Sessions Judge endorsed these findings. I have heard the learned counsel for the parties and am of the opinion that in this view both the Courts below were in error. From what has been stated above it is clear that the petitioner did set forth allegations in her second application which related to certain events that are said to have taken place after the dismissal of the first application. That being so, the second application was maintainable since it is well established that a subsequent application under Section 488, Cr. P. Code based on fresh facts is not barred by the dismissal of a previous application:-- 'Avudai Ammal v. Subramania Pillai', 2 Weir 633 (A).

4. The revision is allowed and the order of the learned Magistrate dated 21-1-1953 dismissing the second application of the petitioner under Section 488, Cr. P. Code, is set aside. The learned Magistrate is directed to enquire into the second application according to law. The petitioner is allowed Rs. 10/- as costs of this revision from the respondent. The parties are hereby directed to appear before the Magistrate on 5-10-1953.