

**ALLAHABAD HIGH COURT**

Ram Singh

Vs.

State

(Kailash Prasad, J.)

Criminal Revn. No. 972 of 1961, against order of Civil and S.J. Budaun,

30.3.1961. 30.01.1962

**ORDER**

**Kailash Prasad, J.**

This revision has been filed by Ram Singh against the order of a Magistrate directing him to pay Rs. 50/- per month to Smt. Ramsri, as maintenance under Section 488. Criminal Procedure Code.

2. Smt. Ramsri is a legally wedded wife of the applicant. She made an application under Section 488, Criminal Procedure Code, against Ram Singh claiming a monthly allowance for her maintenance. She founded her application on the allegations that her husband, Ram Singh had developed illicit intimacy with the wife of her brother and when she objected to it, her husband turned her out of the house. Thereafter Ram Singh married the woman with whom he had developed illicit intimacy and that woman was living with Ram Singh. Smt. Ramsri also alleged that her husband was a man of sufficient means.

3. Ram Singh denied that another woman was living with him and pleaded that Smt. Ramsri was herself unwilling to come and live with him and so she was not entitled to any maintenance allowance.

4. The Magistrate, after examining the evidence produced by the parties, found that Ram Singh had kept another woman and had turned out Smt. Ramsri. The Magistrate further found that Smt. Ramsri was, in the circumstances, justified to refuse to go and live with Ram Singh. The Magistrate was further satisfied that Ram Singh had sufficient means. He, therefore, ordered Ram Singh to pay an allowance of Rs. 50/- per month to Smt. Ramsri.

5. Aggrieved by this order, Ram Singh filed a revision before the Sessions Judge. The Sessions Judge rejected it. Ram Singh has, therefore, come up in

revision to this Court. The main contention of the applicant is that the Magistrate had no jurisdiction to entertain the application of Smt. Ramsri and direct the applicant to pay maintenance to her. The learned counsel for the applicant has made a three-pronged attack on the jurisdiction of the Magistrate. Firstly, he canvassed that a Hindu wife was given a right of maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, and that right was enforceable in a Civil Court. The relief of maintenance to a Hindu wife, therefore, could not be given by a Criminal Court. In support of this argument the learned counsel placed reliance upon *Bikram Singh v. Sudarsan Singh*,<sup>1</sup> where it was held that the combined effect of Sections 9 and 19 read with Section 4 of the Hindu Marriage Act is, that the District Court has the exclusive jurisdiction to decide a suit for restitution of conjugal rights where the parties are Hindus and a Munsif has no jurisdiction to try it.

6. This decision has no direct bearing on the question involved in the instant case. Under the Hindu Marriage Act, 1955, the forum to which petitions for restitution of conjugal rights by a Hindu wife or husband are to be presented, has been specified to be the District Court. Section 19 in fact enjoins that every petition under the Act, including, of course, the petition for restitution of conjugal rights must be presented to the District Court within the local limits of whose ordinary civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together. This necessarily implied that the jurisdiction of any other civil Court, to entertain a petition for restitution of conjugal rights, was intended to be excluded by the Legislature. In the Hindu Adoptions and Maintenance Act, no forum has been prescribed for entertaining applications for maintenance. In fact the Act is silent as to the Court, where the application for maintenance may be moved. As the right of maintenance is of a civil nature, the jurisdiction of a Court to entertain a claim for maintenance will have to be determined with reference to the provisions of Civil Procedure Code. The right of maintenance under Section 488, Criminal Procedure Code is a special right given under the Code. The mere fact that similar analogous remedy is available under the Hindu Adoptions and Maintenance Act in a Civil Court, does not take away the jurisdiction of the Magistrate under Section 488, Criminal Procedure Code to order maintenance to a Hindu wife.

7. The second ground urged by the learned counsel for the applicant is that Section 4 of the Hindu Adoptions and Maintenance Act in fact overrides the provisions of Section 488, Criminal Procedure Code. The argument is without any force. Section 4 runs thus :

'Save as otherwise expressly provided in this Act,

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act.

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus, in so far as it is inconsistent with any of the provisions contained in this Act.'

8. The provisions of Section 488, Criminal Procedure Code are by no means any text, rule or interpretation of Hindu law or any custom or usage as part of that law; nor are they in any manner repugnant to or inconsistent with the provisions of the Hindu Adoptions and Maintenance Act. On the contrary, both the provisions are consistent, inasmuch as both provide for the maintenance of a Hindu wife.

9. The third ground advanced by the learned counsel for the applicant, assailing the jurisdiction of the Magistrate, is that the Hindu Adoptions and Maintenance Act covers the whole subject of maintenance to a Hindu wife and as this Act was enacted subsequently, the earlier provisions of Section 488, Criminal Procedure Code were impliedly repealed. Crawford in his book 'Statutory Construction' has dealt with the question of implied repeals. In Section 137 at page 196 of 1940 Edition of the book, it is mentioned that implied repeals by a subsequently enacted law have been divided into two general classes : those which occur where an Act is so inconsistent or irreconcilable with an existing prior Act that only one of the two can remain in force and those which occur when an Act covers the whole subject of an earlier Act and is intended to be a substitute therefor. There is nothing in the Hindu Adoptions and Maintenance Act to suggest expressly or by necessary implication that the Act is intended to be a substitute for the provisions of Section 488 Criminal Procedure Code. In fact the provisions of Section 18 of the Act cannot be a substitute for Section 488 Criminal Procedure Code. The latter provision is general and is applicable to a wife, irrespective of her religion, but the former is applicable to the case of Hindus only. It could not, therefore, be intended to be a substitute for Section 488 Criminal Procedure Code. The contention of the applicant that the Magistrate had no jurisdiction to entertain Smt. Ramsri's application for maintenance cannot, therefore, be upheld.

10. Another contention of the learned counsel for the applicant, with which I find myself in agreement, is that the amount of maintenance has been fixed by the Magistrate arbitrarily without due regard to the facts, which are necessary to be considered in determining the amount of maintenance. The only finding which the Magistrate has given is that Ram Singh has eighty bighas of land in

joint cultivation and has also a number of cattle and a good house. He has not found as to how many persons are in joint cultivation with Ram Singh; nor did the Magistrate find the profits of the 80 bighas of land and the income of Ram Singh's share. Ram Singh may be having a number of cattle, but if the cattle are maintained only for the purposes of cultivation and are not a source of income by themselves, a reference to them can be of no help in fixing the amount of maintenance. The amount of maintenance cannot properly be fixed without finding out the income of the applicant.

11. The revision is partly allowed and, the order of the Magistrate fixing Rs. 50/- as monthly allowance to Smt. Ramsri is set aside, and the case is sent back to him with the direction that he should first find out the income of Ram Singh and then fix the amount of maintenance, taking into consideration the income of Ram Singh, the applicant.

Case remanded.

Cases Referred.

1. AIR 1961 All 150