

# ANDHRA PRADESH HIGH COURT

Chand Begum

Vs.

Hyderbaig

CrI. R.C. No. 92 of 1970

(Chinnappa Reddy, J.)

08.07.1970

## JUDGMENT

### **Chinnappa Reddy, J.**

1. This is a reference by the learned Sessions Judge of Nizamabad under Section 438, Criminal Procedure Code. Chand Begum, wife of Hyder Baig filed a petition under Section 488, Criminal Procedure Code against her husband claiming maintenance at the rate of Rs. 100/- per month. She alleged that her husband was always illtreating her, that she was compelled to file a petition for maintenance on an earlier occasion also and that her husband induced her to come back to him promising to treat her well but that he started illtreating her again. About three years prior to the filing of the petition he took her to the house of her parents and left her there and did not care about her afterwards. He went to the length of foisting false case of theft against her father and brothers. She also mentioned that the husband had married again. The husband admitted the second marriage. In the counter filed by the husband, while denying the allegations made by the wife he stated that his wife left his house of her own accord and that he was prepared to receive her back if she was willing to go and live with him. When the wife was examined as P.W. 1 she mentioned in her chief-examination that her husband had married again. She was asked in cross-examination whether she was willing to go back to her husband. She said 'I am ready to go provided the respondent keeps me in a separate house and maintains me.' The husband who gave evidence as R.W. 1 admitted that he had married a second wife. He stated in examination in chief 'I am willing to maintain her and provide her separate residence.' In cross-examination he said 'I will keep her in a house for Rs. 5/- or Rs. 6/-. I am not ready to give her any particular amount, but I will maintain her according to our standard of living.' The only point which the learned Magistrate considered was whether the wife was entitled to an order for maintenance under Section 488 on the sole ground of the second marriage of the husband. Purporting to follow the decision of Ananthanarayana Ayyar, J. in *Iqbal Unissa Begum v. Habib Pasha*<sup>1</sup>, the learned Magistrate rejected the claim of the wife. He also referred to the willingness of the wife to go back to her husband provided he kept her in a separate house and maintained her and the readiness of the husband to provide a separate residence for her and to maintain her, and remarked that the father of the wife was evidently an hurdle in the way of the wife and husband coming together. On a revision petition filed by the wife

<sup>1</sup> AIR 1961 And Pra 445

the learned Sessions Judge thought that the mere second marriage of the husband was sufficient to entitle the wife to claim maintenance. He referred to the observations of my brother Kondiah J. in *Shankariah v. Annapurnamma*<sup>2</sup>, The learned Sessions Judge therefore made this reference to the High Court under Section 438, Criminal Procedure Code recommending that the order of the Magistrate may be set aside and that the case may be remitted to the Magistrate to determine the rate of maintenance.

2. A variety of views have been expressed by different courts and Judges on the question raised by the learned Sessions Judge. Some learned Judges have held that the mere second marriage of a husband is sufficient to entitle a wife to claim maintenance under Section 488 Criminal Procedure Code. Some learned Judges have based their conclusion on the explanation to the first proviso to Sub-Section (3) of Section 488. Other learned Judges have based their conclusion on Section 18(2)(d) of the Hindu Adoptions and Maintenance Act, 1956 and its fore-runner Sub-Section 2(4) of the Hindu Women's Right to Separate Maintenance and Residence Act, 1946. Some learned Judges have taken the view that mere second marriage is no ground for making an order under Section 488, Criminal Procedure Code in the absence of proof of neglect or refusal by the husband to maintain the wife. Other learned Judges while agreeing that mere second marriage is not a ground for making an order under Section 488, Criminal Procedure Code have held that second marriage is ordinarily a sufficient reason for a wife to refuse to live with her husband and if a husband insists that the wife should live with him there is in law a neglect or refusal to maintain the wife. In this confusing complexity and divergence of views it is just as well that I first consider Section 488, Criminal Procedure Code unaided by authority.

3. Section 488, Criminal Procedure Code in so far as it is relevant for the purposes of the present case is as follows :

'488 (1) :- If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself ..... a Magistrate of First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child .....

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance. (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may for every breach of the order, issue a warrant for levying the amount due in the manner hereinbefore provided for levying fines, and may sentence such person ..... to imprisonment for a term which may extend to one month or until payment if sooner made;

Provided that, if such person offers to maintain his wife on condition of her living with him and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

If a husband has contracted marriage with another wife or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him;

<sup>2</sup>(1969) 2 Andh WR 326 : (1970 Cri LJ 775)

Provided, further that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) .....

(7) .....

(8) .....

It may be mentioned here that the explanatory paragraph 'If a husband has contracted marriage with another wife or keeps a mistress it shall be considered to be just ground for his wife's refusal to live with him.' occurring after the first proviso to Sub-Section (3) was inserted by Act 9 of 1949. Section 489(2) may also be noticed. It is as follows.

"489 (2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under Section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly."

4. Section 488, Criminal Procedure Code is apparently designed to prevent destitution and to provide speedy and summary relief to destitute wives and children. It has nothing to do with the rights of consortium and connubium but is concerned with plain board and bed. It is also apparent that the right to claim maintenance under Section 488 is not dependent on the right to claim maintenance under the personal law of the parties For example an illegitimate child is not entitled to any maintenance under some of the personal laws prevailing in the country. Nonetheless he is entitled to claim maintenance under Section 488, Criminal Procedure Code. It is further clear that Section 488 is not meant to substitute the personal laws of the parties. On the other hand, an order made under Section 488 is always subject to the adjudication of the rights of the parties by a competent Civil Court. That is provided by Section 489(2), Criminal Procedure Code. These considerations must be borne in mind while interpreting Section 488, Criminal Procedure Code.

5. Now a husband is under a basic duty to maintain his wife and a wife is under a duty to live with her husband. That is common to all the systems of personal law prevailing in the country. That is recognized by Section 488, Criminal Procedure Code. It may happen that a wife lives away from her husband. That does not absolve the husband from the duty of maintaining her. However, if the wife is living in adultery the husband is absolved. So too, if the husband and wife are living separately by mutual consent; the husband is also absolved if the wife, without sufficient reason refuses to live with her husband. The husband may always make an offer to maintain his wife on condition that she lives with him. The offer may be made even in answer to the wife's application for maintenance under Section 488, Criminal Procedure Code. That is

implicit in Sub-Section (4). If the offer is made subsequent to the filing of the application by the wife, the Court will, naturally examine whether the offer is bona fide. If the offer is not bona fide, as where it is a mere ruse to circumvent the proceeding under Section 488 or where the offer is hedged in by conditions which are patently unacceptable to the wife, the Court will treat the offer of the husband as tantamount to a negligence or refusal to maintain the wife. If the offer is *bona fide* and if the wife refuses without sufficient reason to live with the husband, then the husband is absolved. On the contrary if the wife lives away from the husband for sufficient reason and the husband does not maintain her, there is neglect or refusal on the part of the husband to maintain the wife and the wife will be entitled to have an order under Section 488(1) made in her favor. Even a wife who has willfully stayed away from her husband in the past may claim to be maintained by her husband if she is agreeable to live with him. The husband cannot then say that he will not take her back and at the same time refuse to maintain her. It is important to note, having regard to the expression 'neglects or refuses' occurring in Section 488(1), that the neglect or refusal must be in present, that is, at the time of the proceeding before the Magistrate. That is why even a husband who is guilty of neglect or refusal to maintain the wife in the past is permitted to make an offer to maintain the wife if she lives with him. That is why a wife who has willfully stayed away from her husband in the past may also claim to be maintained by her husband. The husband must then decide whether to take the wife back and maintain her or face an order under Section 488(1) Criminal Procedure Code. This appears to me to be the scheme of Sub-Section (1) and (4) of Section 488. Even after an order is made under Section 488(1) the husband may ask for cancellation of the order on proof that the wife is living in adultery, or that without sufficient cause she refuses to live with her husband or that they are living separately by mutual consent. That is provided by Sub-Section (5).

6. The foundation of an order under Section 488(1) is of course, the neglect or refusal of the husband to maintain the wife. Ordinarily, 'neglect or refusal' may mean something more than mere failure or omission. But where there is a duty to maintain, mere failure or omission' may amount to neglect or refusal, in the circumstances' of a case. For example, mere failure to maintain a child who has no will of volition of its own is 'neglect or refusal to maintain the child. A husband who makes it difficult for the wife to live with him and who fails to maintain her when she lives elsewhere 'neglects or refuses' to maintain the wife. A husband may render it difficult for the wife to live with him by his conduct. Physical cruelty, is not necessary. His conduct, without physical cruelty, may make it intolerable for the wife to live with him. A husband cannot expect any self-respecting wife, in keeping with modern ideas, to share the conjugal home with a mistress or another wife. It may be that in the olden days wives were willing to put up with all manner of indignity on the theory that man was the master of woman. Social ideas have now changed. Man is no longer the master of woman and he cannot, with impunity, inflict indignities on woman. In interpreting statutes, particularly those of social significance. Courts are bound to take note of sociological changes and interpret the law so as to be in tune with the changing conditions. Therefore a husband who marries again cannot expect the court to come to his rescue if he wants the first wife to share the conjugal home with a co-wife. If she decides to live separately he is bound to provide a home for her and maintain her. If he does not do that he neglects or refuses to maintain her within the meaning of Section 488(1), Criminal Procedure Code. Thus the offer of a husband, who has taken a second wife, to maintain the first wife on condition of her living with him cannot be considered to be a *bona fide* offer and the husband will be considered to have neglected or refused to maintain the wife. But what if the husband offers to provide a separate home and maintain the wife ? The *bona fides* of such an

offer will naturally have to be considered, but, of course, with a 'pinch of salt' as the expression goes, since the expense of installing and maintaining a wife in a second establishment is bound to be far more than any 'Bed and board' allowance he may be asked to pay under Section 488(1) Criminal Procedure Code. Again, what of the wife, who having wilfully abandoned her husband years ago and virtually compelled him to marry a second wife repents and returns to claim a conjugal home and maintenance? Is the husband bound to provide a separate residence for her and if he does not do that can he be said to have neglected or refused to maintain the wife? That must depend on the circumstances of the case and particularly on the circumstances of the husband. In a situation brought about by the willfulness of the wife it may be too much to accuse the husband of neglect or refusal to maintain her because he is unable to provide her a separate home. The most that the wife may ask in such a situation is perhaps to be permitted to make her bed where her husband is and not to claim separate residence. If that is also denied by the husband he may perhaps then be said to have refused or neglected to maintain the wife.

7. In this view it is unnecessary to consider whether the first proviso to Sub-Section (3) governs Sub-Section (1) as well. I find it difficult to understand why a provision if it is meant to govern the whole section as claimed should occur as a proviso to Sub-Section (3) which only deals with enforcement of orders. Further quite independently of the proviso, the Court is under a duty to consider an offer by the husband to maintain his wife on condition of her living with him. Consideration of such an offer is implicit in Sub-Section (4) which disentitles a wife from receiving any maintenance, if, without sufficient reason, she refuses to live with her husband. If the proviso to Sub-Section (3) governs Sub-Section (1) also then part of Sub-Section (4) becomes redundant. I am, therefore, of the view that the proviso is meant to govern Sub-Section (3) only and not Sub-Section (1). The context and punctuation also support this conclusion.

8. It is also said that the explanatory clause running with the first proviso to Sub-Section (3) has the effect of creating an additional ground for claiming maintenance, apart from neglect or refusal. Even assuming that the explanatory clause 'applies to the whole of Section 488 because of the generality of its language. I do not see how it can be interpreted as creating an additional ground for claiming maintenance. All that it says is that the second marriage of her husband shall be considered to be a just ground for the wife's refusal to live with him. It does not in so many terms say that the second marriage of the husband shall be a ground for making an order for maintenance in favor of the wife. If the object of the legislature was to make the second marriage of the husband an additional ground for making an order for maintenance in favor of the wife I fail to understand why it did not plainly and simply amend the first Sub-Section of Section 488 instead of going about it in such a round about manner, almost surreptitiously as it were.

9. A brief reference may now be made to some of the decided cases. In *Crl. R. C. No. 354 of 1960 (Andh Pra) Basi Reddy J.*, observed, 'the fact that the respondent-husband has married a second wife does not by itself entitle the first wife to claim maintenance under Section 488 Criminal Procedure Code' There is no discussion of the question and it may also be noticed that the learned Judge took care to say that second marriage 'by itself' would not entitle the first wife to claim maintenance clearly implying thereby that the second marriage under some circumstances may entitle the first wife to claim maintenance. *Ananthanarayana Ayyer, J.*, in *AIR 1961 Andhra Pradesh 445* held that the second marriage of the husband would not entitle the first wife to claim separate maintenance. He based his conclusion on the view taken by him that the proviso to Sub-Section (3) governed Sub-Section (3) only and not Sub-Section (1). The

learned Judge did not consider Sub-Section (4) and whether the second marriage of the husband was a sufficient reason within the meaning of Sub-Section (4) for the wife's refusal to live with her husband. In (1969) 2 Andh WR 326 : ((1970) Cri LJ 775) my brother Kondaiah, J., was inclined to differ from Ananthanarayana Ayyer, J. but did not express any final opinion as the case could be decided on other grounds.

10. In *Senapathi v. Deivanai Ammal*<sup>3</sup>, Panchapakesa Ayyar, J., took the view that the offer of a husband to take the first wife back could not be considered to be bona fide. He said 'the petitioner has married again and his offer to take the respondent back and treat her well cannot be taken to be sincere. Even if he takes her back, he will make her an unpaid cook and maid for all work of himself and the second wife, an intolerable position and one to which no Court should drive a married woman.' There is no reference to any of the provisions of Section 488, nor is there any discussion. In *Bayanna v. Devamma*<sup>4</sup>, Govinda Menon J. held that the second marriage of the husband entitled the wife to an order under Section 488. He based his conclusion on Section 2 of the Hindu Women's Right to Separate Residence and Maintenance Act, 1946. The Act has since been repealed. Section 18(2)(d) of the Hindu Adoptions and Maintenance Act of 1956 now provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance, if he has any other wife living. The provision does not straightway enable a wife to claim maintenance on the sole ground that the husband has married again. In fact, Section 23 of the Act leaves the matter of award of maintenance entirely to the discretion of the Court. In *Kundaswami v. Nachammal*<sup>5</sup>, Sadasivan, J., purported to follow the decision of Govinda Menon, J. in 1953 Mad W.N. Cri. 243 : (AIR 1954 Madras 226) without noticing that the Hindu Women's Right to Separate Residence and Maintenance Act had been repealed.

11. In *Bela Rani v. Bhupal Chandra*<sup>6</sup>, J.P. Mitter and Renupada Mukherjee JJ., held 'the mere fact that a husband has contracted marriage with another wife or keeps a mistress cannot, without more be said to amount to neglect or refusal on the part of the husband to maintain his wife within the meaning of Sub-Section (1) of Section 488, Criminal Procedure Code' This statement of the law is, with respect, correct as an abstract statement of the law. The Learned Judges, however, did not consider the effect of Sub-Section (4) and whether the second marriage of the husband was a sufficient reason within the meaning of Sub-Section (4) for the wife's refusal to live with her husband. This decision was followed by Das Gupta J. in *Rupchand v. Charubala*<sup>7</sup>,

12. In *Ishar v. Soma Devi*<sup>8</sup>, Tek Chand, J. held 'in the absence of proof of neglect or refusal to maintain his wife, or in the absence of circumstances justifying such a refusal, the mere act of contracting a second marriage will not, per se be

<sup>3</sup> AIR 1950 Mad 357

<sup>5</sup> AIR 1963 Mad 263

<sup>4</sup> 1953 Mad. W.N. Cri. 243: (AIR 1954 Mad 226)

<sup>6</sup> AIR 1956 Cal 134

<sup>7</sup> AIR 1956 Cal 83

<sup>8</sup> AIR 1959 Pun 295

a ground to claim maintenance though it will furnish a just cause for refusal to live with him.' The learned Judge relied on the decisions in AIR 1956 Calcutta 134 (Supra) and *State v. Anwarbi*<sup>9</sup>. The learned Judge also pointed out that wife who has wilfully left the conjugal home would not be entitled to maintenance if the husband contracted a second marriage. He observed that such a wife had deprived herself of the opportunity of being maintained in the conjugal home. In *Dhan Kaur v. Niranjana Singh*<sup>10</sup>, a Bench of the Punjab High Court consisting of Meher Singh and Dua JJ. held. '..... proof of neglect or refusal by the husband to maintain his wife is the basis of a claim for maintenance by the wife under Section 488 and without proof of

that, no order of maintenance can be made in favour of the wife under that Section even though she is living separate from her husband in pursuance of her statutory right to live separately from him because he has married again or has taken a mistress to himself. Of course, neglect or refusal may be express or implied and, in the circumstances of a particular case, it may be inferred by the Court from the conduct of the husband.' Dua, J. who was a party to the decision in AIR 1960 Punjab 595 while accepting its correctness in *Smt. Rano v. Mathu Singh*<sup>11</sup> added. '.....but then, when a husband imposes a condition that he will maintain his wife only if she lives with him in company with his other wife, in my opinion, the refusal and neglect are both implicit in it. I can understand the husband offering to maintain his wife, without insisting on her giving up her right to live separately, and in that case, of course the wife would not be entitled to approach the court under Section 488, Criminal Procedure Code but then perhaps, in that case, there would be no occasion for her to enforce her rights, because there is no violation thereof.' I respectfully agree.

13. In *Syed Ahmed v. N.P. Taj Begum*<sup>12</sup>, Hegde, J. held that neglect or no neglect the husband is liable to pay separate maintenance to his wife on the sole ground that he has taken a second wife and that the husband who has been compelled to take a second wife by the conduct of the first wife may have a genuine grievance but he has no defence in law. I find it difficult to agree with the learned Judge. Neglect or refusal is the foundation of the claim under Section 488(1) Criminal Procedure Code. Neglect may be implicit where the husband who has married a second wife insists that the first wife should live with him in order to be maintained by him. But neglect may not be implicit where he insists on such a condition having been compelled to marry a second wife because of the wilful desertion by the first wife for several years. It must depend on the facts of each case. The learned Judge arrived at his conclusion on the view which he took that the proviso to Sub-Section (3) governed the whole of Section 488. The learned Judge thought that the whole section would look ridiculous if the husband was allowed to take the plea that he was willing to maintain his wife on condition of her living with him only when the order was being enforced. The learned Judge apparently lost sight of Sub-Section (4) which enables a husband to take such a plea. The learned Judge also appears to have assumed that even prior to the amendment of 1949, judicial opinion was consistent that the proviso governed Sub-Section (1) as well as Sub-Section (3). The assumption does not appear to be well founded. In *Shambu v. Ghalamma*<sup>13</sup>, Hombe Gowda, C.J. and Bhimiah, J. reached the same conclusion as Hegde, J.

14. In *Ramji Malviya v. Munnii Devi*<sup>14</sup>, M.C. Desai J. observed :

<sup>9</sup> AIR 1953 Nagpur 133

<sup>11</sup> 1962 (1) Cri LJ 75 (Punj)

<sup>13</sup> AIR 1966 Mys 311

<sup>10</sup> AIR 1960 Punjab 595

<sup>12</sup> AIR 1958 Mysore 128

<sup>14</sup> AIR 1959 All 767

"Sub-Section (4) governs the whole section including Sub-Section (1); no maintenance can be granted to wife under Sub-Section (1) if she is living in adultery, or if without any sufficient reason she refuses to live with her husband, or if she and her husband are living separately by mutual consent. In the face of Sub-Section (4) it was unnecessary for the legislature to apply the first proviso to Sub-Section (1) also. The proviso seems to have been enacted in order to give the husband one more opportunity of offering to maintain the wife on condition of her living with him."

With this I agree. The learned Judge then said :

"Ordinarily remarriage is a sufficient ground for refusing to live with the husband, but not if it is the natural and direct consequence of her prior refusal, without any sufficient reason, to live with him. She cannot take advantage of her own wrong; she cannot equip herself with a sufficient reason by refusing to live with the husband without any sufficient reason, and thereby compelling him to remarry. The wife became disentitled to any maintenance from the husband when she deserted him and the husband's remarriage did not restore her to the right she had prior to the desertion."

I do not think that this approach is correct. The question is not whether the first wife can be allowed to take advantage of her own wrong. The question is not whether right to maintenance lost once cannot be restored. The question is whether there is a present refusal or neglect on the part of the husband to maintain the wife. A repentant first wife who had earlier deserted the husband may also seek to be maintained by her husband and I have discussed earlier in the judgement what should happen in such a case. In *Teja Bai v. Shankarrao*<sup>15</sup>, Palekar J., on behalf of the Division Bench, pointed out.

"It will be therefore, seen that, in view of Sub-Section (4) it will make no material difference to the situation arising from the wife's refusal to live with her husband on the ground that he has contracted another marriage whether the proviso in Sub-Section (3) is read as a proviso to Sub-Section (1) or to Sub-Section (3)."

The learned Judge then proceeded to state :

"The basis for passing an order under Sub-Section (1) of Section 488 is 'neglect or refusal to maintain' by a person having the means. There can be no two opinions on the question that there should be either neglect or refusal to maintain before a wife is entitled to claim maintenance under that section ..... When the husband knows that the wife has 'sufficient reason' or 'just ground' to live separately from him, the offer to maintain her on condition of living with him is not a valid offer at all. It is merely an evasion of his liability to maintain his wife who is destitute. That, in our opinion, really amounts to a refusal within the meaning of Section 488(1). When the wife makes an application for maintenance, the husband contests that application by making an offer to maintain her on condition that she lives with him, though, he knows that she was entitled to remain separate from him by reason of his contracting another marriage. The offer is

<sup>15</sup> AIR 1966 Bom 48

made with the knowledge that the refusal would be the only answer. In such a case therefore, the offer cannot be considered a valid offer, but only an indirect way of refusing to maintain. The proviso to Sub-Section (3) read with its explanation does not create a new ground for claiming maintenance but requires the Magistrate to test the validity of the offer made by the husband to the wife to live with him. Similar is the position when the offer is made under Sub-Section (4) ..... As already stated, the question to be considered is whether there has been neglect or refusal to maintain within the meaning of Sub-Section (1) of Section 488. It has been long held that a refusal or neglect in present

that is, at the time of the proceedings (See In re. Kuppa Mudali. 2 Weir 630). The Magistrate having jurisdiction under Section 488(1) will have to consider whether at the time of the proceeding before him, there has been a neglect or refusal to maintain the wife. If he comes to that conclusion, he has no alternative but to pass an order of maintenance."

I entirely agree with these observations of Palekar, J.

15. In the light of the above discussion the fact of the present case may be considered. The husband has married a second wife. The offer made by him in the counter filed by him in the proceeding under Section 488 was that he was prepared to receive his first wife back if she was willing to go and live with him. Having regard to the fact that the second marriage was not the result of the conduct of the first wife the offer of the husband cannot be considered to be a *bona fide* offer. No doubt in his evidence he stated that he was willing to maintain the first wife and provide a separate residence for her. This offer also cannot be considered to be *bona fide* as it was not originally made in the counter filed by him and as it is also clear that the husband is not in such affluent circumstances that he can afford to run two separate establishments. The earlier history of the relationship between the parties also shows that a similar offer was made on a previous occasion when the wife filed a petition under Section 488 for maintenance. The offer was then accepted by the wife, but things did not work out well. I, therefore, hold that the present offer of the husband is, not *bona fide*. It must therefore, be considered that the husband has neglected or refused to maintain the wife. The wife is, therefore, entitled to an order under Section 488(1), Criminal Procedure Code. The reference is accepted and the case is remitted to the learned Judicial First Class Magistrate of Nizamabad to determine the rate of maintenance and pass appropriate orders.

Reference accented.