

CALCUTTA HIGH COURT

Sm. Bela Rani Chatterjee

Vs.

Bhupal Chandra Chatterjee

Criminal Revn. No. 184 of 1955

(J.P. Mitter and Renupada Mukherjee, JJ.)

05.09.1955

JUDGMENT

J.P. Mitter, J.

1. This Rule which has been referred to us by Debabrata Mookerjee, J. involves the construction of Sub-Section (1) of Section 488, Criminal Procedure Code. The question for decision is whether a wife is entitled to an order of maintenance under Section 488, Criminal Procedure Code merely upon proof that her husband has contracted marriage with another wife or keeps a mistress.

2. The facts which give rise to the question are these : The petitioner Belarani Chatterjee was married to the opposite party on 8-2-1947. The marriage did not prove a success. According to the petitioner, while residing at Howrah, the opposite party, not only became unduly intimate with an unmarried girl but treated the petitioner with great harshness and cruelty. When, in December 1948, the position became intolerable, the petitioner left the opposite party and went to reside with her relations. In 1950 the opposite party married again, making it impossible for the petitioner to live with the opposite party. On 28-7-1953, the petitioner filed in the Court of Sub-Divisional Magistrate at Alipore an application under Section 488, Criminal Procedure Code claiming maintenance from the opposite party.

3. The opposite party resisted the petitioner's claim on the ground that she was a woman of easy virtue and that, in any event, she had refused to live with him without sufficient cause and that accordingly she was not entitled to claim any maintenance.

4. The learned Magistrate, inter alia, held that cruelty had not been established and that the opposite party's second marriage contracted two years after the petitioner had left her husband was not a sufficient ground to justify the petitioner's claim to separate maintenance.

5. According to Debabrata Mookerjee, J., the Jurisdiction of a Magistrate under Sub-Section (1) of Section 488 Criminal Procedure Code rested upon proof of neglect or refusal on the part of a husband to maintain his wife and that the mere fact that a husband had taken a second wife was not by itself a ground for making an order under the section.

P.N. Mookerjee, J., On the other hand, held that in view of the provision's of Section 2, Hindu Married Women's Right to Separate Residence and Maintenance Act, 19 of 1946, a husband's failure or refusal to give his wife separate maintenance would amount to "neglect or refusal to maintain" within the meaning of Section 488, Order P.C. (see *Panchu Gopal Modak v. Dolly Modak*¹).

6. In order to appreciate the two points of view, it is necessary to point out that by an amendment of 1949 the following explanation was added to proviso 1 to Sub-Section (3) of Section 488 : 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."

It is clear that the explanation provides a Just ground for a wife's refusal to live with her husband when the husband offers to maintain her on condition of her living with him. It is also clear that this provision is applicable to the case of any wife, be she a Christian or a Hindu or a Mohomedan. At first sight it would appear that the effect of the explanation introduced by the amendment of 1949 would be material only after an order under Sub-Section (1) of Section 488 has been made, but the language of proviso 1 to Sub-Section (3) makes it clear that a Magistrate may consider such ground of refusal on a wife's part to live with her husband and make an order under the section, notwithstanding the husband's offer to maintain her on condition of her living with him. In our view, it is not permissible to read into the explanation anything more than what it says in the context of proviso 1 to Sub-Section (3). In our view, it would not be permissible to pray in aid the provisions of the Hindu Married Women's Right to Separate Residence and Maintenance Act For the purpose of construing Sub-Section (1) of Section 488, Criminal Procedure Code. The observations made by P.N. Mookerjee, J. are, if we may say so with great respect, too wide. Whatever might be the personal law of any wife, she must, in order to entitle her to an order under Sub-Section (1) of Section 488, Criminal Procedure Code, establish, inter alia, that there is a present neglect or refusal on the part of her husband to maintain her. The mere fact of a second marriage cannot ipso facto establish "such neglect or refusal" within the meaning of Sub-Section (1) of Section 488, Criminal Procedure Code, for, a man may marry a second time and still not refuse to maintain his first wife. In our view, 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 483, Criminal Procedure Code.

7. In this case, the learned Magistrate came to certain findings of fact which we do not feel we can upset on the evidence in the case. The learned Magistrate, in our view, rightly held that the opposite party's second marriage some two years after the petitioner had left her husband's

protection was not in the circumstances of the case a sufficient ground to entitle the wife to separate maintenance.

8. The result, therefore, is that this application fails and the Rule is discharged.

Renupada Mukherjee, J.

I agree.

Rule discharged.

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