

CALCUTTA HIGH COURT

Rupchand Mahato

Vs.

Charubala Mahatani

Criminal Revn. Case No. 1375 of 1964

(D.N. Das Gupta, J.)

18.12.1964

ORDER

D.N. Das Gupta, J.

1. This revisional petition is directed against the order of a learned Magistrate granting a monthly maintenance allowance of Rs. 50 to the opposite party, Charubala Mahatani, under Section 488 Criminal Procedure Code.

2. It is not disputed that the parties are married and they lived together for some years. Thereafter the husband married a second wife and sometime thereafter a third wife. The opposite party then refused to live with the petitioner and went to live separately elsewhere. In the instant case she made allegations of torture against the petitioner which were not believed by the learned Magistrate. He seems to infer neglect from the fact of the petitioner marrying a third wife. The learned Magistrate observed :

"This third marriage is an overt act which can be said to have changed the whole context materially. 1st party's surroundings in the O. P.'s ghar is no longer the same before. Even if there is no direct evidence of her torture and persecution at the hands of her husband, this act of her husband to remarry for the third time is enough disrespect to the sentiments of the 1st party and should be construed as gross neglect on the part of the O.P. 1st party is well within her right to refuse to live with her husband who in the meanwhile contracted a third marriage." Now the learned Magistrate is not right when he infers neglect from the mere fact of the third marriage. The following explanation to the first proviso to Section 488(3) Criminal Procedure Code came up for consideration in a Bench decision of this Court resorted in *Bela Rani Chatterjee v. Bhupal Chandra Chatterjee*¹, "If a husband has contracted marriage with another wife it shall be considered to be just ground for his wife's refusal to live with him."

3. Mitter, J. sitting with Renupada Mukherjee, J. made the following observations in that decision

:

"It is clear that the explanation provides a just ground for a wife's refusal to live
60 Cal WN 212 : (AIR 1956 Cal 134)

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 Mahomedan. 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 the first proviso 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 the first proviso to Sub-Section (3) * * * 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 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"

4. The learned Advocate for the opposite party relies on a decision of this Court reported in *Gouribala Jana v. Nityauanda Jana*², where Amaresh Roy, J., observes as follows :

"What the law says is in effect that the fact of a second marriage provides just ground for the wife's refusal to live with the husband and if the husband either neglects or refuses to maintain the wife at that separate residence that amounts to the neglect and refusal mentioned in Sub-Section (1) of Section 488 Criminal Procedure Code" The decision reported in 60 Cal WN 212 : (AIR 1956 Calcutta 134) (supra) has not been referred to by Amaresh Roy, J. In any event, I feel that the Bench decision reported in 60 Cal WN 212 :

(AIR 1958 Calcutta 134) is binding on me. The explanation reproduced above means that if a husband has married another wife, that shall be considered to be a just ground for his wife's refusal to live with him. The explanation does not say that the fact of the husband marrying another wife will by itself be a ground for claiming maintenance. The fact of the husband marrying a second wife does not ipso facto prove neglect or refusal on the part of the husband to maintain the wife. The learned Magistrate was not right when he inferred neglect from the mere fact of the husband marrying another wife. The learned Magistrate has disbelieved the story of ill-treatment and does not say that apart from the fact of another marriage there are any other materials to prove neglect or refusal on the part of the husband to maintain the wife. The order of the learned Magistrate cannot, therefore, be sustained. It is accordingly set aside.

5. The Rule is made absolute as above.

Rule made absolute.

²68 Cal WN 1178 : (AIR 1965 Cal 190)