

MYSORE HIGH COURT

Shambu Reddy

Vs

Ghalamma

Criminal Revn. Petn. No. 341 of 1964

(H. Hombe Gowda, C.J. and K. Bhimiah, J.)

07.04.1966

JUDGMENT

Bhimiah, J.

1. This Revision Petition came up before Gopivallabha Iyengar, J. sitting singly. His Lordship has referred the same to a Division Bench of this Court doubting the correctness of the decision of this Court reported in AIR 1958 Mysore 128, in view of the decisions in *Ishar v. Soma Devi*¹, *Mt. Dhan Kaur v. Niranjana Singh*², and in *Iqbal Unnissa Begum v. Habib Pasha*³. His Lordship has also formulated two questions of law for decision to the Division Bench They are : 1. Whether the proviso following Sub Section (3) of Section 488 governs only sub Section (3) or whether it governs also Sub-Section 488 of the Code of Criminal Procedure. (2) That even if the proviso referred to above governs Sub-Section (1) of Section 488 also, whether it would be necessary to prove neglect or refusal on the part of the husband in cases where the husband has contracted a second marriage with another wife or keeps a mistress."

2. Briefly stated the facts of the case necessary for the disposal of the Revision Petition are as follows : The respondent filed a petition for maintenance under Section 488 of the Criminal Procedure Code before the Munsiff Magistrate, Chincholi, in case No. 17/5 of 1964. The respondent is the married wife of the petitioner. According to her the marriage took place 15 to 16 ago. The petitioner married another woman about 10 years ago and that even after the second marriage, the respondent lived with the petitioner for 3 years. Due to negligence and ill-treatment, she was forced to leave the petitioner's house about 7 years back and since then she is residing with her mother and is maintained and fed by her mother. She claims maintenance from the petitioner.

The say of the petitioner is that he married respondent 22 years ago and that some 15 years back she left his house without his knowledge and permission and lived with her parents at Ogipur village, Tandur Taluk, A. P. and since then, she is residing there only. The petitioner's efforts to bring her back were in vain as she refused and declined to live with the petitioner. The petitioner waited for 3 years for return of the respondent and after giving a final warning to her, he contracted a second marriage about 12 years ago. He denies neglect or ill-treatment. On the other hand, he asserts

¹ AIR 1959 Pun 295

³ AIR 1961 And Pra 445

² AIR 1960 Pun 595

that he treated her with love and affection throughout the period of matrimonial life as a true and sincere husband, and he is quite willing to accept her company and resume matrimonial relations if she comes and lives with him. The respondent is unwilling to do so. A preliminary objection was taken on behalf of the respondent that by virtue of proviso under Sub-Section (3) of Section 488 of the Criminal Procedure Code, the evidence relating to cruelty or negligence need not be recorded inasmuch as the petitioner has admitted the second marriage and that the recording of evidence should be confined only to the quantum of maintenance. The learned Magistrate, after hearing counsel for the respondent as well as the petitioner and relying upon the decision in *Syed Ahmad v. Nagnath Parveen Taj Begum*⁴, came to the conclusion that the petitioner is bound to maintain the respondent and the question of neglect or cruelty or desertion need not be gone into in this case. It is against this order, the petitioner has come up in revision.

3. Sri K.J. Shelly, the learned Advocate for the petitioner, contended that the law laid down in the decision in AIR 1958 Mysore 128 to the effect 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, does not lay down correct interpretation of Sub-Sections (1) and (3) of Section 488 of the Criminal Procedure Code, and therefore it requires reconsideration. He further urged that the proviso to sub-Section (3) of Section 488 Criminal Procedure Code governs only that Sub-Section and not the Sub-Section (1) of Section 488 Criminal Procedure Code He also urged that in the event of the proviso to Sub-Section (3) governing Sub-Section (1) the wife must necessarily prove neglect for refusal on the part of the husband to get an order of maintenance passed by the Magistrate, Sri K.A. Swamy, the learned Advocate for the respondent, contends that the law laid down in the decision in AIR 1958 Mysore 128 is the correct interpretation of the provisions of Sub-Section (1) and sub-Section (3) of Section 488 Criminal Procedure Code A number of decisions bearing on the question of law have been brought to our notice by both the advocates.

4. Before considering the merits of the contentions raised on both sides, in the light of the decisions cited for and against, it is necessary to quote the relevant provisions of Section 488 Criminal Procedure Code Section 488 reads thus :

"488(1) Order for maintenance of wives and children : If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the 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 at such monthly vale, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit and to pay the same to such person as the Magistrate from time to time directs.

2.

(3) Enforcement of order :- If any person so ordered fails without sufficient

⁴ AIR 1958 Mys 128

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 manner herein before provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, 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 :

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."

5. It is relevant to note, that the 2nd paragraph of the first proviso following Sub-Section (3) of Section 488 Cr P.C. was added by Section 2 of the Criminal Procedure Code (Amendment Act) 1949. i.e. Act 9 of 1949. This Act itself was repealed by the Repealing and Amendment Act 48 of 1952. But the provisions of Section 4 of this Act make it clear that although the Act of 1949 has been repealed, the substantive portion of the Act which was incorporated in the Criminal Procedure Code and which became part and parcel of it continues to remain intact. See the decision in *Mohindar Singh v. Mst. Harbhajan Kaur*⁵.

6. There is conflict of judicial opinion on the scope and application of the first proviso following Sub-Section (3) of Section 488 Criminal Procedure Code It has been held in some cases that the first proviso following Sub-Section (3) of Section 488 Criminal Procedure Code governs only that sub-section and not Sub-Section (1) of Section 488. and for the wife to entitle her to an order under Sub-Section (1) of Section 488 Criminal Procedure Code, she must establish that there is neglect or refusal on the part of her husband to maintain her and that the mere fact that the husband has contracted a marriage with another wife or keeps a mistress cannot ipso facto establish such neglect or refusal within the meaning of Sub-Section (1) of Section 488 Criminal Procedure Code See the decision in *Smt. Bela Rani Chatterjee v. Bhupal Chandra*⁶, *Andhra Pradesh*⁷ *Ramji Malviya v. Smt. Munni Devi Malviya*⁸, and *State v. Mt. Anwarbi*⁹.

7. Before the 2nd para was added to the first proviso following Sub-Section (3) of Section 488. Criminal Procedure Code by the Act 9 of 1949, the judicial opinion in India was more or less similar to what has been stated above.

⁵ AIR 1955 Pun 141

⁷445, AIR 1959 Pun 295

⁹ AIR 1953 Nag 133

⁶ AIR 1956 Cal 134, AIR 1961

⁸ AIR 1959 All 767

See the decisions in *Mt. Nooran v. Rasool Baksh*¹⁰, *Emperor v. Shambai*¹¹, *Mt Roshan Bano v. Azim*¹², and in *K. Pullamma v. K Thatalingam*¹³.

8. On the other hand, in some other cases, it has been held that the first part of the proviso which comes after Sub-Section (3) of Section 488 Criminal Procedure Code governs even Sub-Section

(1) of Section 488 Criminal Procedure Code and that neglect or refusal or no neglect or refusal, the husband is liable to pay separate maintenance to his wife on the sole ground that he has taken a second wife or has kept a mistress. See the decisions in *Mst. Biro v. Behari Lal*¹⁴. *Smt Maiki v. Hemraj*¹⁵ *Govindram Naraudas v. Ratanbai Nathuram*¹⁶, AIR 1958 Mysore 128, AIR 1960 Punjab 595, *Smt Ranjit Kaur v. Dr. Avtar Singh*¹⁷. *Smt. Banarsi Bai v. Ghisoolal*¹⁸. *Senapathi Mudaliar v. Deivanai Ammal*¹⁹, *B. Rajeswariamma v. K.M. Viswanath*²⁰. *Bhanwarlal v. Gitabai*²¹, *Ram Kishore v. Smt Bimla Devi*²², and in *Kandaswami Gounder v. Nachammal*²³.

9. Before we proceed to examine the correctness of the two views mentioned above, we have to bear in mind the principles laid down by the Supreme Court while interpreting Statutes in *R.M.D Chamar Baugwalla v. Union of India*²⁴.

"When a question arises as to the interpretation to be put on an enactment, what the court has do is to ascertain "the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. The literal construction then has in general, but prima facie preference. To arrive at the real meaning, it is always necessary to gel an exact conception of the aim, scope and object of the whole Act; to consider (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed, and (4) The reason of the remedy".

10. The Code of Criminal Procedure (Amendment Act) 1949 i.e., Act 9 of 1949 was intended to meet a special circumstance. While Section 488 of the Criminal Procedure Code provided for summary remedy to a deserted wife to claim maintenance from her husband, it did not provide for separate maintenance in the event of the wife refusing to live with her husband on the ground that he has contracted another marriage or has kept a mistress Several High Courts had rendered conflicting rulings on this point and therefore the wife was under those circumstances found to be at a disadvantage. This had caused great hardship to the wife. The Act 9 of 1949 was intended to remove the hardship suffered by a wife who refused to live with her husband on the ground that the husband has taken another wife or has kept a mistress. It was also intended to set at rest the controversy on the question whether the husband taking another wife or keeping a mistress is a just ground for the wife's refusal to live with him and also

¹⁰ AIR 1939 Sind 80

¹² AIR 1943 Lah 59

¹⁴ AIR 1958 Jam and Kas 47

¹¹ AIR 1941 Nag 175

¹³ AIR 1954 Mad 44

¹⁵ AIR 1954 All 30

¹⁶ AIR 1956 Sau 105

¹⁸ AIR 1955 Ajm 8(2)

²⁰ AIR 1954 Mys 31

¹⁷ AIR 1960 Pun 221

¹⁹ AIR 1950 Mad 1357

²¹ AIR 1957 Mad Pra 221

²² AIR 1957 All 658

²⁴ AIR 1957 SC 628

²³ AIR 1963 Mad 263

whether such a ground would constitute sufficient reason to grant separate maintenance to the wife.

11. We have to examine the correctness of the two conflicting judicial opinions in the light of the principles laid down by the Supreme Court mentioned above and also in the light of the intendment of the Act 9 of 1949 set out above.

12. We may straightway say that the interpretation given in the first series of decisions cited in

paras 6 and 7 does not bring out the correct import and application of the first proviso immediately following Sub-Section (3) of Section 488 Criminal Procedure Code. Some of those decisions have taken the location of the first proviso following Sub-Section (3) of Section 488 in arriving at the conclusion that the said proviso applies only to Sub-Section (3). See the decisions in AIR 1943 Lahore 59 and in AIR 1961 Andhra Pradesh 445.

13. A Division Bench of the Calcutta High Court in AIR 1956 Calcutta 134 has come to the conclusion that it is not permissible to read into the explanation added to first proviso to Sub-Section (3) of Section 488 anything more than what it says in the context of the first proviso to Sub-Section (3). Further, it is held that 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 taking a second wife 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. 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. It is significant to note in this decision that while coming to the above conclusion their Lordships have not taken into consideration the words "make an order under this Section" occurring in the first proviso, following Sub-Section (3) of Section 488, Criminal Procedure Code and also the question of maintenance not arising if the husband who has taken the second wife is otherwise maintaining the first wife.

14. In AIR 1959 Allahabad 767, M.C. Desai, J. (as he then was) observed that the proviso is part of the first sentence of Sub-Section (3) the sentence ending with colon (:), and not with full-stop (.) and therefore must be read with it only and not with any other sub-section such as Sub-Section (1). But at the same time the learned Judge has further observed that it is difficult to understand why the Legislature used the word 'Section' instead of 'Sub-Section', "punctuation mark cannot be allowed to control the plain and evident meaning of language" used in the first proviso by the Legislature in its wisdom. This interpretation, in our opinion, is not liberal. It does not meet the purpose intended by the Legislature.

15. In AIR 1959 Punjab 295, Tek Chand, J. has held that the mere fact that the husband has contracted a second marriage or has kept a mistress by itself is not a valid ground for claiming maintenance under Section 488 Criminal Procedure Code if the husband has not otherwise neglected or refused to maintain her. This conclusion is based on the ground that Section 488, Criminal Procedure Code does not purport to protect the conjugal rights, namely, connubium and consortium; but it provides for only food, raiment and shelter when the husband neglects or refuses to maintain the wife. When the husband has contracted another marriage or has kept a mistress, and in those circumstances, the wife refuses to accept the offer of the husband to maintain her, its condition of her living with him the questions of connubium or consortium do not arise. In those circumstances, the real question is whether such a conditional offer implies refusal to maintain the wife as required under Sub-Section (1) of Section 488, Criminal Procedure Code. This aspect is not made clear in this decision.

16. In AIR 1953 Nagpur 133, it has been held that the mere fact that a husband has married again

does not entitle the wife to maintenance, although as shown it has to be regarded as a just ground for her refusal to live with him. and that the refusal or neglect to maintain constituted the basis for the exercise of jurisdiction by a Court under Section 488 Criminal Procedure Code This is a case in which the husband had remarried and he offered to maintain the applicant-wife on condition that she should live with him and the applicant-wife had refused to do so. The Court, having come to the conclusion that the wife was refusing to live with the husband on a just ground, has not given reason as to why further refusal or neglect is to be proved by the wife to entitle her for maintenance.

17. The interpretation of the first proviso following Sub Section (3) of Section 488 Criminal Procedure Code in the first series of decisions mentioned above does not meet the intendment of the Act 9 of 1949. Those decisions, in our view, are inconsistent with the progressive status and emancipation of women. The object and scope of Section 488, Criminal Procedure Code is to provide maintenance to the deserted wife. In reply to a maintenance petition filed by the wife, the husband, who is having another wife or has kept a mistress, offers to maintain the applicant only on condition of her living with him and not other wise' the wife refuses to live with him taking benefit of the proviso following Sub-Section (3) of Section 488, Cr P.C. and in such a case if the law does not compel the husband to maintain the wife, the wife will be forced to suffer desertion. The object of Section 488 Criminal Procedure Code i.e. prevention of vagrancy will be defeated if the Magistrate still insists upon the proof of neglect or refusal. This aspect of the matter is not considered in the first series of decisions. Therefore, with great respect to the learned Judges, we are unable to agree with the opinion that the first proviso following Sub-Section (3) of Section 488, Cr. P.C governs only that Sub-Section and not Sub-Section (1), and that the mere fact the husband had contracted a second marriage or has kept a mistress cannot, ipso facto, establish such neglect or refusal within the meaning of Sub-Section (1) of Section 488, Criminal Procedure Code

18. The judicial opinion, expressed in the 2nd series of decisions cited above, has innovated a liberal interpretation of the provisions of Section 488 Criminal Procedure Code It satisfies what was intended by the amendment.

19. K.S. Hegde, J. in AIR 1958 Mysore 128, while meeting a similar contention, observed as follows -

"The several sub-sections to Section 488 Criminal Procedure Code have never been considered by Courts in isolation. They are an integrated whole. They must be taken cumulatively. When the legislature amended the first proviso to Sub-Section (3) of Section 488, Criminal Procedure Code it knew full well the scope of the first proviso interpreted by decided cases.

If the decided cases did not truly represent the legislative intention, the legislature would have certainly clarified its intention. But the fact that the legislature left the first proviso untouched excepting to provide an exception to it shown that there was no conflict between the intention of the legislature and the judicial interpretation. Judicial opinion has been uniform on this point. I unhasitatingly reject the contention of the revision petitioner." Therefore, his Lordship held that

"A husband can in an application under Section 488 Criminal Procedure Code take the

plea that he is willing to maintain his wife if she lives with him. It is a good defence if it is a *bona fide* one. If the main proviso is available in proceedings under Sub-Section (1) then it necessarily follows that the amendment made to that proviso will also be applicable to such cases. If the husband can plead that he is willing to maintain the wife, she in her turn can plead that she is not willing to live with him on the ground that he has taken a second wife. There is no particular reason as to why such a plea should be available only at the time of enforcement of the order and not at the time of its passing. Neglect or no neglect the husband is liable to pay separate maintenance to his wife on the sole ground that he has taken second wife".

20. A Division Bench consisting of the Chief Justice and S. Murtaza Fazl Ali, J. of Jammu and Kashmir High Court, has, in AIR 1958 Jammu and Kashmir 47, held as follows :

"It is well settled that a proviso to the Section is in the nature of an exception to the general provisions contained in the Section. The proviso added by Act 9 of 1949 runs as follows :

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

A careful perusal of this proviso clearly shows that this meant to be an exception to the general conditions laid down in Clause (1) of Section 488, Criminal Procedure Code To limit it and to say that in spite of the proviso the conditions laid down in Clause (1) of Section 488 have to be proved is in my opinion, not a proper interpretation of the proviso as it would render the effect of the proviso nugatory ... It is, therefore, clear that the proviso is self-contained Section and affords exception to the general condition laid down in Clause (1) of Section 488, Cri P.C." While coming to the above conclusion their Lordships have observed as follows –

"Before the amendment, the fact of the husband's marrying a second wife or keeping a mistress was not by some High Courts considered a just ground for the first wife's refusal to live with him although it was taken into account in considering whether the husband's offer to maintain his first wife was really 'bona fide' or not.

The amendment is clearly intended to put an end to an unsatisfactory state of law utterly inconsistent with the progressive ideas of the status and emancipation of women, in which women were subjected to a mental cruelty of living with a husband who had taken a second wife or a mistress on the pain of being deprived of any maintenance if they chose to live separately from such a husband." We are in respectful agreement with the above decision. It fully supports the view taken by this Court in AIR 1958 Mysore 128 and an earlier decision of the former High Court of Mysore in AIR 1954 Mysore 31.

21. Mulla, J. in AIR 1957 Allahabad 658 held as follows :

"The proviso to Sub-Section (3) is added in the interests of the wife and not the husband. It is to stop a Court from too readily accepting the proposition that as soon as a husband

offers to maintain his wife, if she lives with him, he ceases in 'neglect' or to 'refuse to maintain' his wife. It was a recognition of the principle that a woman is entitled to live with that amount of decency and dignity which prevails in her class and if the treatment of the husband towards his wife does not permit her to lead such a life, his conduct amounts to neglect and 'refusal to maintain' within the meaning of Section 488, Sub-Section (1). Such an offer is, therefore, to be carefully tested and if the wife gives adequate reasons for refusing to live with her husband, she is not to be deprived of her right to maintenance. It is only when her reasons are insufficient that her claim can be denied."

22. In AIR 1957 Madhya Pradesh 221, Nevaskar, J. held that :

"When a husband effects a second marriage, it is open for the first wife to refuse to live with her husband and that will be considered to be a just ground for her refusal. The proviso to Sub-Section (3) of Section 488 entitles the Magistrate to consider the grounds put forward by the wife claiming maintenance for her refusal to stay with her husband in spite of an offer to that effect and to pass order awarding maintenance to her, if such grounds are considered by him to be just. The amendment to the proviso puts down the fact of second marriage by the husband as a just ground for her refusal. Therefore, even if there be an offer by the husband, to maintain his wife on condition for her living with him, the Magistrate is entitled to pass an order of maintenance, if that offer be under the circumstance that the husband has contracted a second marriage and his second wife is living with him."

23. In AIR 1954 Allahabad 30, Randhir Singh, J. has held that no other ground for refusal to live with the husband need be looked into if there is the good ground of husband's contracting another marriage for the wife's refusal to live with her husband. The fact that the wife came once or twice to live with her husband even after his remarriage does not improve matters in favour of the husband.

24. In an earlier decision in AIR 1950 Madras 357, Panchapakesa Ayyar, J. has held that an order awarding separate maintenance to the first wife is correct and proper, where the husband has married again and his offer to take the first wife back and treat her well cannot be taken to be sincere. His Lordship has further observed that even if he takes her back he will only make her an unpaid cook and maid for all work of himself and his second wife, an intolerable position and one to which no Court should drive a married woman.

25. In a recent decision in AIR 1963 Madras 263, Sadasivam, J. came to the conclusion that though the proviso (1) to Sub-Section (3) of Section 488 governs only the Sub-Section (3), the provision of remarriage by the husband is a just ground for the wife's refusal to live with him lays down a general principle, which must be borne in mind when it is to be considered whether the wife's refusal to live with her husband is without any reason within the meaning of Sub-Section (4). Sub-Section (4) governs the whole Section 488 including Sub-Section (1). A wife who refuses to live with her husband on account of his remarriage is, therefore, not prevented by Sub-Section (4) from claiming maintenance allowance under Sub-Section (1). This decision though does not affirm the view that proviso (1) following Sub-Section (3) of Section 488, Criminal

Procedure Code, governs Sub-Section (1) of Section 488, it recognises the general principle that a wife refusing to live with her husband on account of his remarriage, is not prevented by Sub-Section (1) from claiming maintenance under Sub-Section (1) of Section 488.

26. The decisions referred to above clearly support the view taken by this Court in AIR 1958 Mysore 128.

27. Next we come to three other decisions of importance of this point. They are: AIR 1960 Punjab 221; AIR 1960 Punjab 595 and AIR 1956 Saurashtra 105.

28. Shah, C.J. and Baxi, J. in AIR 1956 Saurashtra 105 held as follows :

"The mere location of the first proviso or the fact that the second proviso relates to Sub-Section (3) is not a good ground for holding that the first proviso refers to Sub-Section (3) only. As it is, the word 'Section' is used in the said proviso and it is more in consonance with the scheme of the Section itself to hold that before making an order of maintenance under Sub-Section (1) the Court is required to consider the husband's offer to maintain the wife if she lives with him and in doing so, to also take into account the wife's refusal and the grounds on which that refusal is based.

If the husband's offer is *bona fide* and genuine and if there are no justifiable grounds for the wife's refusal then the Court may not award her any maintenance. Even after the order of maintenance is made under Sub-Section (1), if the husband makes a *bona fide* offer and the wife refuses to live with him without justifiable grounds, the Magistrate may not enforce the order as required by Sub-Section (3). The first proviso is also a proviso to Sub-Section (1). If the husband contracted a marriage with another wife then that fact is a sufficient justification for the wife's refusal and the husband's offer will not matter. She will be entitled to refuse to live with him because of the fact of the second marriage and the husband will be bound to maintain her separately by reason of the husband's second marriage the wife would be justified in living separate, and if the husband does not maintain her then that would amount to his neglect or refusal entitling her to an order of maintenance from the Court."

29. Harbans Singh, J. in AIR 1960 Punjab 221, has held that the first part of the proviso which comes after Sub-Section (3) of Section 488 is available to the husband even under Sub-Section (1) at the time of the decision of the application for maintenance as well as at the time of the enforcement of the maintenance order, quoting with approval the decision of this High Court in AIR 1958 Mysore 128.

30. A Division Bench of the Punjab High Court in AIR 1960 Punjab 595, on a reference made to it on the points which are more or less similar to the points referred to us in this case held as follows :

"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. In practice in many such cases the difference of judicial opinion will resolve into nothing more than consideration by the Court whether, when the wife is living separately from her husband because he has married again or has kept a mistress, circumstances are such that an inference of neglect or refusal by the husband to maintain his wife is or is not available. Where such inference is available, the order would obviously be justified but in those rare cases in which such inference is not available, order under Section 488 will not be justified."

31. Thus from the consideration of the case as above, it is clear that the judicial opinion favoring the interpretation that the first proviso following Sub-Section (3) of Section 488, Criminal Procedure Code governs also Sub-Section (1) of Section 488 out-weighs the judicial opinion against it.

32. Statutes which intend to remedy any social evil are to be construed liberally Karl. N. Llewellyn, an American Author, in an Article "Remarks on the theory of Appellate Decision and the Rules or canons about how Statutes are to be construed" 3, Vanderbilt L. Rev. 395 (1950), has given illustrations with regard to canons of Construction. We may quote three illustrations relevant to our purpose. They are : (1) a Statute cannot go beyond its text. To effect its purpose a statute may be implemented beyond its text (2) Exceptions not made, cannot be read, The letter is only the 'bark' Whatever is within the reason of the law is within the law itself. And (3) Punctuation marks will not control the plain and evident meaning of language. These canons of construction also clearly support the liberal interpretation of the first proviso following Sub-Section (3) of Section 488 The word 'Section' used in the first proviso following Sub-Section (3) of Section 488, Cr. P.C cannot be read as 'Sub-Section', when the legislature in its wisdom has used in the word Section in stead of 'Sub-Section'. The punctuation mark namely the colon (:) used in Sub-Section (3) of Section 488, Criminal Procedure Code cannot be permitted to control the plain and evident meaning of language.

33. Under Sub-Section (1) of Section 488. Criminal Procedure Code it is open to the husband both before and after an order of maintenance is passed by a Magistrate to offer to maintain the wife on condition of her living with him. It is equally open to the wife to refuse to live with the husband if he has taken a second wife or is keeping a mistress, which is provided for in the first proviso following Sub-Section (3) When the law provides that the husband taking a second wife or keeping a mistress is just ground for wife's refusal to live with him, the husband's offer to maintain her only on condition of her living with him would impliedly amount to refusal to maintain her as required under Sub-Section (1) of Section 488. Criminal Procedure Code Therefore, if a husband, admittedly, has contracted another marriage or if it is proved that he has kept a mistress and in reply to an application for maintenance by the other wife, he offers to maintain her on condition of her living with him when the wife refuses to live with him, it is sufficient for the Magistrate to pass an order of maintenance without further proof of neglect or refusal.

34. We are, therefore, unable to agree with the contentions raised by Sri K.J. Shetty and in our view these contentions have no merit.

35. Therefore, our answer to the first question is that proviso following Sub-Section (3) of Section 488, Cr. P.C governs not only Sub-Section (3) but also Sub-Section (1) of Section 488, Criminal Procedure Code Our answer for the second question is that it is not necessary for the wife to prove neglect or refusal on the part of husband in cases where the husband has contracted a second marriage with mother wife or keeps a mistress.

36. In view of what we have stated above, the law as laid down in AIR 1958 Mysore 128 does not require any re-consideration. It lays down correct interpretation of law.

37. In the instant case, the learned Magistrate has applied the principle laid down in the above said case and has rightly held that the question of neglect or cruelty or desertion need not be gone into and that the petitioner is bound to maintain the respondent. He is also right in directing the parties to confine their evidence only with regard to the petitioner's ability to maintain the respondent and the quantum of maintenance payable to her. For the reasons stated above, this petition fails and the same is hereby dismissed with costs.

Revision petition dismissed.