

## PUNJAB AND HARYANA HIGH COURT

Mohindar Singh

Vs

Harbhajan Kaur

(Bhandari ,J.)

18.08.1954

### JUDGMENT

#### **Bhandari, C.J.**

1. This petition raises the question whether the portion of proviso (1) to Sub-section (3) of Section 488 of the Code of Criminal Procedure which was inserted by the Code of Criminal Procedure (Amendment) Act, 1949, has been\_ repealed by the Repealing and Amending Act of 1952. This portion is in the following terms:

"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."

2. The facts of the case are simple and not in dispute. On 24-7-1953 a Magistrate of the first class of the Jullundur District made an order under Section 488, Criminal P. C. directing the husband to pay a certain sum of money every month for the maintenance of his wife. This order was based principally on the ground that the husband had contracted a marriage with another wife. The learned Additional Sessions Judge recommends that this order be set aside as it appears to have been passed by the Magistrate in ignorance of the "fact that the Act of 1949 was repealed by the Act of 1952 and the fact that the provision of law on which the order was based had ceased to exist.

3. Mr. Amolak Ram Kapur who appears for the husband contends that when the Act of 1949 was repealed by the Act of 1952 the earlier Act was taken out completely from the statute book of the country and as the new provision was inserted in Section 488 by virtue of the Act of 1949 this provision too was automatically removed from the Criminal P. C. If the new provision has ceased to exist it is obvious that the fact that the husband has contracted a second marriage may or may not be considered to be a just ground for the wife's refusal to stay with him.

4. I regret I am unable to concur in this contention. Repealing and Amending Acts are enacted by the Legislature from time to time in order to repeal enactments which have ceased to be in force

or have become obsolete or the retention whereof as separate Acts is unnecessary. The principal object of Repealing and Amending Acts is to "excise dead matter, prune off superfluities; 'and reject clearly inconsistent enactments."

5. An Act of this kind may thus be regarded as a legislative scavenger. It consists usually of two parts: a repealing part and an enacting part. 'The' repealing part consists of a schedule which contains the names of Acts which are sought to be repealed either because they have expired or because they have become unnecessary. The enacting part consists of a number of saving Clauses one of which is designed to secure that enactments in which a repealed enactment has been applied, incorporated or referred to should be unaffected by its repeal.

6. The Repealing and Amending Act of 1953 was also designed to secure two ends, namely to repeal certain enactments and to preserve certain others. It repealed the Act of 1949 and obliterated it completely from the records of Parliament. But at the same time it declared in Section 4 that "The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;....." The provisions of this section make it quite clear that although the Act of 1949 has been repealed, the substantive portion of the Act which was incorporated in the Criminal P. C. and which became a part and parcel of it, continues to remain intact. The Act of 1952 was enacted with the sole object of getting rid of a certain quantity of obsolete matter.

7. The view taken by the Additional Sessions Judge that as the Act of 1949 has been repealed the new provision which was inserted in Section 488 by the Act of 1949 must fall with the Act by which it was enacted appears to me to be wholly misconceived. I am accordingly of the opinion that there is no force in the recommendation made by him. The petition must therefore be dismissed.

Cases Referred.

1AIR 1954 SC 369(C)