

Mohd. Rasool vs Mst. Rabbo And Anr. on 26 July, 1955

Equivalent citations: AIR1955ALL693, 1955CRILJ1550, AIR 1955 ALLAHABAD 693

ORDER

Mulla, J.

1. This is an application of revision arising out of proceedings under Section 488, Criminal P. C.
2. Shrimati Rabbo, daughter of Dilley Kabaria resident of Lucknow, filed an application under Section 488. Criminal P. C., against her husband Mohammad Rasul, a resident of Barabanki. She claimed that she was the married wife of Mohammad Rasul and out of this marriage a son named Abdul Khaliq was born. This marriage took place some four or five years before filing the case and she went to Barabanki to live with her husband there.

Her husband acted cruelly towards her and occasionally gave her a beating. On one occasion he threw her down the stairs as a result of which she received such a severe injury in her hip joint that she has become a cripple. According to her, after she received this injury, her husband brought her to Lucknow for treatment and resided with her at Lucknow for about five or six months. He then deserted her and in spite of her efforts to secure maintenance from him, he refused to maintain her. She had been living with her father at Lucknow all this time.

3. Mohammad Rasul admitted that Shrimati Rabbo was his married wife and Abdul Khaliq aged about one year was his son. He however, denied that he ever illtreated Shrimati Rabbo. He also denied that he resided with Shrimati Robbo at Lucknow at her father's house. It was contested on his behalf that the Lucknow Courts had no jurisdiction to hear these proceedings.

4. The trial court accepted the version given by Shrimati Rabbo and found that Mohammad Rasul had resided at Lucknow for five or six months when he had brought her for treatment and thus the Lucknow courts had jurisdiction to hear this case. It ordered Mohammad Rasul to pay his wife Shrimati Rabbo Rs. 15/- per month as her own maintenance allowance and Rs. 8/-per month as the maintenance allowance for Abdul Khaliq.

Mohammad Rasul went up in revision against the order of the trial Court, but the Sessions Judge, Lucknow, maintained the order holding that as the trial court had accepted the case of the wife about her husband staying in Lucknow for five or six months with her, which statement was corroborated by two witnesses, the Lucknow courts had jurisdiction in these proceedings. Mohammad Rasul has now come up in revision before this Court.

5. The counsel for the applicant before me has urged two grounds. Firstly, it was contested that Mohammad Rasul did not reside with Shrimati Rabbo at Lucknow and the trial court has erred in evaluating the evidence on that point. This question has been concluded by the findings of fact and I am not willing to reopen it. I find that the statement of Shrimati Rabbo is supported by two other witnesses and the trial court was entitled to believe these statements in preference to the version given by Mohammad Rasul or his witnesses.

There is no illegality committed by the trial court in believing the wife's version and I see no reason to re-assess the evidence on that point.

6. The second contention raised by the counsel for the applicant was that the Lucknow courts had no jurisdiction to hear this case, even if it is admitted that Mohammad Rasul came and stayed at the house of his father-in-law for about five or six months, as his permanent residence is at Barabanki. According to him this visit of Mohammad Rasul to Lucknow was only a casual visit and cannot be interpreted as residing together within the meaning of Sub-section (8) of Section 488, Criminal P. C. Sub-section (8) of Section 488 Criminal P. C., runs as follows:

"Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife,"

In my opinion the words of the section contemplate that there are three places where proceedings can be started by a wife against her husband under Section 488, Criminal P. C. Firstly, she can proceed against him in the district where he resides, secondly in the district where he is at the moment and thirdly, in the district where he last resided with her. There is nothing in the language to suggest that the words 'last resided' should mean where they last resided permanently.

I think that the language of the section clearly suggests that proceedings can be started against the husband apart from the place where he permanently resides. I am in agreement with the observations of Broomfield J., -- 'In re Sama Jetha', AIR 1930 Bom 348 (A).

"There is nothing in the language of Section 488, Clause (8) which makes it necessary and if it is not necessary it is for obvious reasons undesirable to assign a strict or technical meaning to the words 'last resided' in that clause or to treat those words as denoting permanent residence only."

In my opinion a temporary residence within its territorial limits is enough to confer jurisdiction on a court to hear such an application.

7. Of course, if the husband and wife have resided at some other place after residing within the jurisdiction of a court, it would not be entitled to hear these proceedings, because the residence of the husband and wife within its territorial jurisdiction cannot be described as the place where they last resided together.

8. The counsel for the applicant relied on certain decisions which were mainly based on the Full Bench decision of the Allahabad High Court in -- 'Arthur Flowers v. Minnie Flowers', 32 All 203 (FB) (B). This was a case under the Divorce Act, but as the words used in the Divorce Act are the same which are used in Sub-section (8) of Section 488, Criminal P. C., that decision was placed before me as an authority for interpreting the words 'last resided' together. The facts of that case are quite different from the facts of this case and it can be distinguished.

The other decisions relied upon by him are, -- 'Mt. Ramder v. Jhunni Lal', AIR 1926 Oudh 268 (C); -- 'Devid v. Mrs. Esther Dennis', AIR 1951 Nag 248 (D), and -- 'Charan Das v. Mst. Surasti bai', AIR 1940 Lah 449 (E). In these decisions it has been held that the test which should be applied in determining the point in issue is whether the husband and wife lived together merely as casual visitors or whether they came and stayed with an intention to stay for an indefinite period.

The Lahore authority cited above after reviewing the case law on the point came to the following conclusion :

"The principle deducible from these authorities appears to be that in the case of persons who have a fixed residence, a visit to another place for however long a period, so long as it is casual, will not confer jurisdiction."

In this decision, however, it has not been determined what will amount to a casual visit and what will amount to a temporary residence.

9. In my opinion a stay for above five or six months with the intention of having one's wife treated cannot be called a casual visit. It amounts to a temporary residence and, therefore, it is enough to confer jurisdiction. It was held in --'Sher Singh v. Mt. Amir Kuer', AIR 1927 All 291 (F).

" The point at which a visit or a stay becomes capable of being held to be residence is one that it is difficult to define."

Still the learned Judge in that case found that a residence of two months at a place even though the husband went back to his permanent residence for days in between, was enough to give jurisdiction to a court as it amounted to temporary residence. In my opinion the rule of law laid down in 'AIR 1927 All 291 (F)'; 'AIR 1930 Bom 348 (A)', and -- 'Sampoornam v. N. Sundaresan', AIR 1953 Mad 78 (G), applies to the present case.

In 'AIR 1953 Mad 78 (G)', the entire case law was again reviewed and the learned Judges observed:

"The word 'resided' in Section 488, Criminal P. C., has been the subject of several decisions. It implies something more than paying a casual visit, but is not equivalent to something in the nature of having a domicile in a particular place.
..... ."

"In short Sub-section (8) of Section 488. Criminal P. C., does not necessarily refer to a permanent residence and it refers also to temporary residence and the word 'residence' implies something more than a brief visit but not such a continuity as to amount to domicile."

I find myself in agreement with the view expressed above and I think that in the circumstances of the present case the Lucknow court had jurisdiction to decide it.

10. I, therefore, uphold the order passed by the Magistrate and dismiss this application of revision. The stay order passed in the case is vacated.

11. Prayer for certifying it as a fit case for appeal to the Supreme Court is rejected.