

Smt. Maiki vs Hemraj on 20 July, 1953

Equivalent citations: AIR1954ALL30, AIR 1954 ALLAHABAD 30

ORDER

Randhir Singh, J.

1. This is a reference by the Sessions Judge of Lucknow recommending that the order refusing to grant maintenance to Smt. Maiki should be set aside as the view taken by the learned Magistrate was not proper in this case. It appears that Smt. Maiki was married to her husband some 8 or 9 years ago when she was hardly 5 or 6 years of age. She is said to be 16 or 17 years of age at present and her husband has admittedly taken a second wife. After the remarriage of her husband the applicant moved the Magistrate under Section 488, Cr. P. C., that he should order payment of maintenance to her. The learned Magistrate threw out the application on the ground that Smt. Maiki had been living with her husband for some time at least amicably even after the husband had taken a second wife. The Magistrate has also submitted his explanation along with the order of reference. It appears to me that the learned Magistrate was of the opinion that it was at the discretion of the Magistrate to accept or not to accept the second marriage of the husband as a ground for refusal and that it was not in all cases that the courts were bound to accept this ground as a valid ground for refusal to live with the husband,

2. The view taken by the learned Magistrate appears to be clearly wrong. Section 488, Cr. P. C. was amended in 1949 and the words which are added are "If a husband has contracted marriage with another wife or keeps a mistress it shall be considered to be just ground for the wife's refusal to live with him." The effect of this amendment obviously is that the ground mentioned in this amendment which was sometimes accepted as a valid ground and sometimes, not should be accepted as a valid ground for the wife's refusal to live with her husband if he has taken a second wife or kept a mistress. In the present case, some of the witnesses for the opposite-party have admitted that even before Smt. Maiki was actually married to the opposite party she had been living as a mistress of the opposite-party for 2 or 3 years. The plea taken by the opposite-party that he was obliged to take a second wife on account of some oath which he was put to by his mother-in-law does not, therefore, appear to be well founded. Smt. Maiki has come of age only recently and if she finds that the atmosphere in the house of her husband after his remarriage was not congenial to her she was justified in refusing to live with her husband. No other ground for refusal to live with the husband need be looked into if there is this good ground 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 opposite-party. It is possible that Smt. Maiki made some efforts to reconcile her fate to the altered circumstances and it was her experience after her visit to her husband's house after his remarriage that presumably drove her to the necessity of living apart and to ask for maintenance. The circumstances of this case, therefore, clearly justify the request of Smt.

Maiki for an order of maintenance against her husband.

3. It remains now to be seen as to what should be the proper amount which the husband should be ordered to pay Smt. Maiki on account of her maintenance. The opposite party is in receipt of a sum of Rs. 55/- p.m. which I am told includes dearness allowance which may be stopped at any time after the living index has gained normality. The opposite-party has to maintain, besides his new wife his mother & may also have to maintain his children which may be born to the wife subsequently. All these circumstances have, therefore, to be taken into consideration in fixing the amount of maintenance. It has been suggested by the learned Counsel for the opposite-party that a sum of Rs. 10/- per mensem may perhaps be sufficient for the maintenance of Smt. Maiki. This sum appears to me to be sufficient in the circumstances. It will be open to the parties to apply to the Court of the Magistrate to alter the amount of maintenance if it appears at any future time that the maintenance is too low or too high if there is an increase in the emoluments of the opposite party or a substantial decrease in the price level of commodities.

4. I, therefore, accept the reference made by the Sessions Judge and set aside the order passed by the Magistrate. The opposite party is ordered to pay Rs. 10/- per mensem as maintenance to Smt. Maiki with effect from 1-7-1953.