

Shamsher Khan vs Sm. Siddiquunnisa And Ors. on 17 September, 1952

Equivalent citations: AIR1953ALL720, AIR 1953 ALLAHABAD 720

ORDER

Misra, J.

1. This criminal revision arises out of proceedings for maintenance under Section 488, Criminal P. C. The Courts below have agreed in holding that Smt. Siddiquunnisa and her three minor children, Ilias, Ishaq and Mush-taq were entitled to get maintenance allowance of Rs. 30/- per month from Shamsher Khan, the husband of Smt. Siddiquunnisa and the father of the minors. They overruled the defence which was to the effect that the application was not bona fide; that there was no refusal on the part of the husband to maintain the wife; that he never ill-treated her or her children and that he is an old man of 65 and has no source of income. The learned Magistrate accepted the version of the claimants, namely, that Shamsher Khan Used to chastise Smt. Siddiquunnisa and refused to maintain her or the children; that he has landed property, a grove and a cycle shop at Purwa and that he receives a certain amount of income from Bombay. He summed up his findings thus :

"Thus going through the entire evidence produced by the parties I am of opinion that Shamsher Khan lived with the wife of his Sarhoo Yaqub Khan and as such refused to maintain the applicants and that he has a cycle shop and some land in Purwa and also earns in Bombay. Taking into consideration the means of Shamsher Khan and the fact that there are 4 persons to be maintained I order Shamsher Khan to pay Rs. 30/- as an allowance to the applicant Sm. Siddiquunnisa for her maintenance and the maintenance of her three minor sons."

2. Before the Additional Sessions Judge, Unnao, who was moved by Shamsher Khan in revision, it was urged that the application was not maintainable inasmuch as a previous application under Section 488, Criminal P. C. on the same cause of action was rejected by the learned Magistrate. It was further contended that in view of the offer made by Shamsher Khan to maintain his wife and children it was incumbent on the learned Magistrate to make an enquiry relating to the genuineness of the offer under the proviso to Section 488(3), Criminal P. C. and that failure on the part of the Magistrate to address himself to the question vitiated the trial Court's proceedings. There was also the complaint that the applicant was Shut out from cross-examining the witnesses produced by his wife. None of these contentions, however, found favour with the learned Judge.

3. The arguments have been repeated in this Court on behalf of the husband but I find myself unable to give effect to them in view of the findings reached by the Courts below.

4. Orders under Section 488, Criminal P. C. are discretionary and the High Court interferes in these cases only on rare occasions, that is to say, only when it is shown to the satisfaction of the Court that the learned Magistrate did not exercise his discretion judicially and substantial justice was not done. So long, therefore, as the proceedings in the Courts below are in order and So long as the decision rests on appreciation of evidence, the order would be allowed to stand even if the revisional Court entertains some doubt regarding the correctness of the findings reached by the Magistrate. Accepting then the findings arrived at by the Courts below, it has to be seen whether there was any fatal irregularity in the proceedings conducted there. That there was an offer to maintain the wife and the children in the written statement filed by Shamsher Khan does not admit of any doubt. Looked at, however, in the light of Shamsher's previous conduct it is impossible to hold that the offer was a bona fide one. The circumstances of the case indicate that it was made merely with the object of escaping the obligations and resisting the claim for maintenance. There was also the fact that the physical as well as legal cruelty was duly established in the case -- legal cruelty in the sense that Shamsher Khan was found to be living with Siddiquinnisa's sister. I am clear that the so-called offer could not stand in the way of a grant of maintenance allowance.

5. So far as the argument relating to the bar of the present application under Section 488, Criminal P. C. is concerned, the material on the record is wholly insufficient for the pur-

pose of establishing that there was a previous application under Section 488, Criminal P. C. or that it was on the same facts. The whole argument is based upon a statement made in the application of Siddiquinnisa that the previous application in which the opposite party was ordered to file written statement was dismissed in default of appearance. The nature of that application and the allegations upon which it was based were not disclosed and that it would be a mere surmise to hold that the previous application even if it was under Section 488, Criminal P. C. was based on the same facts as the present one. I may add that there is nothing to show that any adjudication took place in the earlier application.

6. The argument relating to the shutting out of the cross-examination of the witnesses by Shamsher Khan has no foundation. It would seem that the witnesses were cross-examined by him personally but considering that cross-examination to be inadequate he wanted to be given another opportunity for cross-examining them through counsel and his request was refused by the learned Magistrate. There is, in my judgment, no irregularity there.

7. There were two Subsidiary arguments addressed by the learned counsel on behalf of Shamsher Khan in this Court.

(1) That under the personal law of the parties the father is entitled to the custody of the children and he should (not?) therefore be obliged to pay for their maintenance if they live away from him; and (2) That the amount of maintenance, considering the circumstance's of Shamsher Khan, is excessive.

8. The statutory liability imposed by Section 488, Criminal P. C. is distinct from the liability under the personal law. It has been proved to the satisfaction of the Courts below that there was a refusal

on the part of the husband to maintain his wife and children. I have held that the offer to keep them is not bona fide. It follows that neither the wife nor children can be deprived of the maintenance merely because they chose to live away from Shamsher Khan.

9. The second point raised relates to the circumstances of Shamsher Khan. It has already been stated that the learned Magistrate held that Shamsher Khan had certain landed property, a grove, a cycle shop and some income from Bombay. Under the circumstance's regard being had to the object underlying the proceedings under Section 488, a maintenance of Rs. 30/- for the upkeep of the wife and her three children can scarcely be regarded as excessive.

10. The application has no substance and I dismiss the revision application and uphold the order passed by the learned Magistrate.