

Dhani Ram vs Mst. Ram Dei on 17 August, 1954

Equivalent citations: AIR1955ALL320, 1955CRILJ768, AIR 1955 ALLAHABAD 320

ORDER

Asthana, J.

1. This revision application arises out of a case under Section 488, Criminal P. C. The applicant was ordered by a first class Magistrate, Kanpur to pay Rs. 25/- per month as maintenance to his wife. He filed a revision against this order before the learned Sessions Judge who rejected it.

2. It appears from a perusal of the judgment of the learned Magistrate that the application was made by the wife on the ground that she was (sic) treated by the applicant and turned out of the house and was refused maintenance by him. She also alleged that after she had been turned out the applicant married a second wife. It was not dispute ed on behalf Of the applicant that he had married a second wife. He, however, denied that he has maltreated the first wife or had turned her out of the house. It is an admitted fact that the first wife contracted a cataract of both the eyes. She examined several witnesses in support of her allegation that she had been maltreated by the applicant and turned out of the house. There is no doubt that the learned Magistrate has not given an express finding in his judgment that the appli-cant has maltreated his first wife and had turned her out of the house, but from the trend of the judgment it appears that he believed the evidence produced on this point by the wife. There is (sic) doubt that it would have been better if the learn-ed Magistrate ^would have expressly mentioned (sic) in the judgment that he was believing the evidence on behalf of the wife.

3. Another contention which was advanced on behalf of the applicant was that there is no finding by the learned Magistrate that the applicant had any means to support his wife and in the absence of such a finding the applicant could not be ordered to pay maintenance to the wife according to the provisions of Section 488, Criminal P. C. There is no doubt that there is no finding on the question of maintenance. The learned Magistrate has relied upon a decision of the Madras High Court reported in -- 'In re Kandasami Chetty', AIR 1926 Mad 346 (A), where the word "means" used in Section 488, Cr. P. C., was interpreted. It was held in that case that the word "means" in the section did not mean that the husband should be possessed of any tangible property, but if a man was healthy and able bodied he must be taken to have the means to support his wife. There is nothing on the record of this case to show that the applicant is not healthy or able bodied and is, therefore, not in a position to earn for himself and his wife. The word "means" includes earning capacity and in view of this interpretation the applicant has the means.

4. Lastly it was argued that the amount of Rs. 25/- per month is excessive and should be reduced.

Considering the present times I do not think this amount is unreasonable.

5. For the reasons given above I decline to interfere in revision. The application is therefore rejected. Leave to appeal to the Supreme Court is refused.