

Punn Deb vs Mt. Bishnuli on 1 March, 1950

Equivalent citations: AIR1950ALL454, AIR 1950 ALLAHABAD 454

ORDER

Agarwala, J.

1. This is a reference made by the Additional Sessions Judge of Kumaun recommending that the order of a learned Magistrate directing Pandit Punn Deb applicant to pay cash maintenance at the rate of Rs. 10 per month to his wife Sm. Bishnuli under Section 489 Criminal P. C., be set aside and Sm. Bishnuli be directed to seek her remedy in the civil Court.

2. The facts of the case, briefly, are as follows: Sm. Bishnuli is the Dhanit wife of Pandit Punn Deb of Naugaon Mirayee Patti Walla Gewar, Tahsil Ranikhet District Almora. On 8th January 1944, she made an application under Section 488, Criminal P. C. claiming maintenance from her husband. There was a compromise between the parties in the course of these proceedings whereby Pandit Punn Deb agreed that he would give to Sm. Bishnuli a house to live in and half of a certain piece of land by way of maintenance for her and for her son. In accordance with this compromise, the Magistrate passed an order on 4th April 1944 directing Pandit Punn Deb to give the land to her by way of maintenance.

3. It appears that Pandit Punn Deb did not abide by the terms of the compromise with the result that Sm. Bishnuli had to file another application in which she prayed that Pandit Punn Deb be ordered to comply with the previous order passed on the basis of the compromise. Punn Deb was ordered to comply with the previous order within fifteen days of the date of the order. This order is dated 15th December 1944.

4. Again there was trouble. Pd. Punn Deb cut away the crops of the field allowed to Sm. Bishnuli. Sm. Bishnuli then filed a civil Suit No. 38/ 132 of 1946 in the Court of the Additional Civil Judge, Ranikhet on 20th July 1946, claiming Rs. 100 as damages on the allegations that Pandit Punn Deb had forcibly removed the crops of the field. The civil Court held that she had failed to prove that she had cultivated the land and dismissed her suit. Sm. Bishnuli then filed the application which has given rise to the present proceedings under Section 489, Criminal P. C., on 1st May 1947. She prayed that the order dated 4th April 1944, be modified and that she may be allowed cash maintenance as she was not being allowed to cultivate the plots which were given to her.

5. The learned Magistrate held that there was a change in the circumstances of the lady justifying the modification of the previous order. Accordingly he fixed a sum of Rs. 10 per month as the maintenance to be paid by Pandit Punn Deb. Pandit Punn Deb applied in revision to the Sessions Judge of Kumaun. The Additional Sessions Judge, who heard the case, was of opinion that the criminal Court had no jurisdiction to enforce a compromise entered into by the parties and that the

remedy of the lady lay in the civil Court and the application under Section 489 was misconceived. He has, accordingly, made the reference to this Court as already stated.

6. In my opinion, the view of the law taken by the learned Additional Sessions Judge is incorrect. In support of his view the learned Sessions Judge has relied upon a case of the Lahore High Court reported in *Sham Singh v. Mt. Hukam Devi*, A I.R. (17) 1930 Lah. 524: (31 Cr. L. J. 1179). In this case, relying upon two previous decisions of the Punjab Chief Court reported in *Mt. Rohain Bibi v. Khair Din*, 42 P. R. 1888 Cr. and *Raham Ali v. Mt. Fateh Bibi*, 59 P. R. 1905 : 2 Cr. L. J. 690, it was held that where the parties have arrived at a compromise in the proceedings under Section 488, Criminal P. C., the civil Court was the proper forum to enforce the compromise and the same could not be enforced by the criminal Court. No reasons for this view were given in the case above cited. The Punjab Records of the year 1888 is not available to me but the second case reported in *Raham Ali v. Mt. Fateh Bibi*, 2 Cr. L. J. 690: (39 P. R. 1905) has been produced before me. In this case the only reason assigned for the view that a compromise made under Section 488, Criminal P. C., could not be enforced by the criminal Court is that upon entering into such a compromise it could no longer be said that "the husband neglects or refuses to maintain" his wife. I respectfully do not agree with this view.

7. When a husband refuses or neglects to maintain his wife, the latter makes an application under Section 488, Criminal P. C. If, on the date of the application her allegations in the application were true, they do not become untrue merely because during the pendency of those proceedings the parties come to terms as to the amount of the maintenance that should be allowed to the wife. The compromise arrived at, in these circumstances, merely denotes that the parties agreed as to the amount that should be paid. It does not imply that the husband had not neglected or refused to maintain his wife when the petition was made. The jurisdiction of the Court to entertain the petition has to be seen according to the circumstances as they existed on the date of the application. When the compromise is arrived at the Court is not bound to give effect to it though it will usually give effect to it. After the compromise has been arrived at, the Court has still to pass an order. If it passes an order in terms of the compromise then it is that order and not the compromise that is sought to be enforced subsequently. The criminal Court has every jurisdiction to enforce its own order even though it was passed on the basis of a compromise arrived at between the parties. I am supported in this view by another decision of this Court reported in *Ram Saran Das v. Mt. Ram Piare*, A. I. R. (24) 1937 ALL. 115 : (38 Cr. L. J. 312).

8. Mr. Jaikishun Lal on behalf of the Government has urged that the application does not fall under Section 489, Criminal P. C., because it does not show any 'change in the circumstances' of the applicant. Section 489 runs as follows:

"(I) On proof of a change in the circumstances of any person receiving under Section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit; provided that if he increases the allowance the monthly rate of one hundred rupees in the whole be not exceeded."

9. The expression 'change in the circumstances' of any person has not been defined or explained by the Criminal Procedure Code. Ordinarily, the expression implies a change in the material circumstances of a party; his poverty or otherwise, the increase or decrease in his liabilities and so forth. The expression, however, is wide enough to cover a case like the present in which the husband persistently refuses to allow the lady to cultivate the field which was given to her in lieu of her maintenance by an order under Section 488, Criminal P. C. If the lady finds it impossible to cultivate the plot by the action of the husband himself, this is a circumstance which has changed the situation as it existed on the date on which the order under Section 488, Criminal P. C. was passed entitling the Magistrate to modify his previous order. As in the present case the Magistrate was satisfied that the change in the circumstances justified that the lady should get the cash allowance instead of the land itself, I see no reason to interfere with his order.

10. The reference is, therefore, rejected and the order of the Magistrate maintained; Shrimati Bishnuli shall be informed of the order of this Court.