
(1952) 11 BOM CK 0014
In the Bombay High Court

Ambadas Bajirao

APPELLANT

Vs

Annapurna Bai

RESPONDENT

Date of Decision : 28-11-1952

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488, 488(1), 488(3)

Citation : (1953) CriLJ 1267

Hon'ble Judges : Hemeon, J

Bench : Single Bench

Judgement

Hemeon, J.—The applicant Ambadas was ordered u/s 488, Criminal P.C. by the First Class Magistrate, Nagpur, to pay Rs. 40-0-0 per mensem as maintenance to his wife Annapurna-bai (non-applicant); & his appln. for revision of that order was dismissed by the First Additional Sessions Judge, Nagpur. He has now come up in revision to this Court.

2. The parties were married over 25 years ago and had no issue. The applicant remarried in 1935 and his second wife, who was also childless, died in 1945. Shortly afterwards, he married again and had a daughter. For the last 3 years, the non-applicant lived separately in a portion of his house; and her case was to the effect that he ill-treated her on several occasions. Finally, according to her, he on 5.1.1950 attacked her and drove her from the house. On 8.5.1950, he falsely reported to the police that she had stolen ornaments from him.

3. His version was that she began of her own volition to live separately from him in the house, although she was well provided for, that she left the house of her own accord and that she took with her cash and ornaments. He denied that he had maltreated her or expelled her from his house, but he admitted that he had made a report against her to the police in respect of the theft of ornaments. He expressed his willingness to keep her in his house, if "she at all wants to live with him as a good wife."

4. The applicant Ambadas died after the present application for revision had been

filed; and the question now is as to whether or not the order can be enforced against his estate In - Ead Ali Vs. Lal Bibi, a Division Bench held that a claim for arrears of maintenance abates on the death of the person against whom an order under Sub-section (1) of Section 488, Criminal P.C. has been made, and cannot be enforced thereafter against his estate. That ruling is based on the facts that a deceased husband cannot after his death be taken to have failed, without sufficient reasons, to comply with the order as laid down in Sub-section (3) of Section 488, Criminal P.C. and that evidence could not be recorded in the presence of the husband as required by Sub-section (6) of, that section. That view was followed in - Hari Singh v. Mt. Gulab Devi AIR 1944 Pesh 6 by a Division Bench of the Peshawar Judicial Commissioner's Court.

5. The non-applicant would thus not be entitled in these proceedings to the maintenance money awarded to her from 25.9.1951, the date of the magisterial order awarding her maintenance at the rate of Rs. 40/- per mensem, to the date of her husband's demise which took place after May 1952. She is similarly precluded from securing any subsequent allowance on account of maintenance; and in - Lingappa Goundan v. Esudasan 27 Mad 13 a Division Bench ruled that a claim for maintenance can only be enforced during the life-time of the father and terminates with his death. This may operate harshly in some cases, but where a right to maintenance exists under the personal law of the parties it can be enforced not only against the husband or father during his life-time but against his estate after his death.

Here the parties are Hindus; and if the widow does not succeed to the estate of her husband as his heir she is entitled under Hindu law to maintenance from his separate property and from property in which he was a co-parcener at the time of his death. There is also authority for the view that she does not lose her right of maintenance from the estate of her husband even if she has lived apart from him in his life-time without any justifying cause and was living separately from him at the time of his death: - S. Bangaramma v. S. Brambaze 31 Mad 338 (D).

6. The order in question is accordingly set aside.