

(1891) 04 AHC CK 0009
In the Allahabad High Court
In Re: Malcolm DeCastro

Date of Decision : 04-04-1891

Acts Referred:

Citation : (1891) 04 AHC CK 0009

Final Decision : Dismissed

Judgement

Knox, J.—On the 15th October 1890, Mary DeCastro, lawfully married wife of Malcolm DeCastro, applied under s. 488 of the Code of Criminal Procedure for an order directing her husband to make a monthly allowance for her maintenance and that of her three children. Summons to appear and answer to this application was served upon Malcolm DeCastro. It is evident from the record and as a matter of fact admitted by him that he made no appearance and allowed the case to proceed against him ex-parte. From the statement on oath of Mrs. DeCastro it appears that she lived with her husband till the year 1881; that she went on a temporary visit to her sister, and on her return to her husband found herself compelled to leave him because he had a woman living with him.

2. Upon these statements the Magistrate of Allahabad passed an Order for maintenance. Malcolm DeCastro now applies to this Court to revise that order on the ground that he was a resident of Ajmere at the time Mrs. DeCastro had made the application for maintenance, and consequently the Cantonment Magistrate of Allahabad had no jurisdiction to entertain the application. He put forward two other grounds as grounds why the order of the Magistrate should be revised, but they are grounds which entirely deal with facts, and, sitting as a Court of Revision, I see no reason to interfere with the Magistrate's finding on those facts.

3. There remains the question of jurisdiction. Mr. Simeon, who appeared for the petitioner, maintained that the only Court which had Jurisdiction was the Court within the local limits of whose jurisdiction his client was actually residing at the date when the application for maintenance was instituted. He referred the Court to the case of ILR 1885 9 40 (Bom.)

4. Mr. Ross Alston, who appeared for Mrs. DeCastro, contended that the "Magistrate of Allahabad had jurisdiction and that the case before this Court

differed from that before the Court at Bombay. It was proved in the case before this Court that the wife had good cause for refusing to live with her husband, and in such a case she was at perfect liberty to choose her own place of residence. She had, moreover, the right to be maintained by her husband at the place of residence which she might choose, and if he failed to maintain her she had a right to institute her application for maintenance in the district in which she happened to reside.

5. The learned Government Pleader, who appeared in support of the Magistrate's order, drew attention to the case of *W.B. Todd* N.W.P.H.C. Rep. p. 237.

6. The question of jurisdiction is one which must be decided by the provisions of the Code of Criminal Procedure. The neglect to maintain a wife is an offence, inasmuch as it is an omission which is made punishable by the Code, and as an offence its place of trial must be determined by the provisions laid down in Chapter XV of the Code. In the present instance I am satisfied that Mrs. DeCastro has proved that her living apart from her husband was a lawful act, and that she was entitled to be maintained by him at Allahabad, which she had chosen as her place of residence. The neglect to maintain her was thus an offence committed within the local limits of the jurisdiction of the Magistrate of Allahabad. This is in accordance with the view taken by this Court in *Todd's* case, and I therefore find that the contention of want of jurisdiction fails.

7. The case before the Bombay High Court appears to have been based upon facts of a different kind. The application is dismissed and the order of the Magistrate of Allahabad maintained.