
(1957) 05 CAL CK 0032
In the Calcutta High Court
Case No : Criminal Revn. No. 422 of 1957

James Fredrick Rowland

APPELLANT

Vs

Raynah Rowland Nee Glover

RESPONDENT

Date of Decision : 28-05-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 1(2), 488
Divorce Act, 1869 — Section 44

Citation : AIR 1959 Cal 703 : (1959) CriLJ 1315 : 62 CWN 221

Hon'ble Judges : S.N. Guha Ray, J

Bench : Single Bench

Advocate : Balai Chandra Roy, for the Appellant; P.K. Sandell and Bimal Chandra Chatterjee, for the Respondent

Judgement

S.N. Guha Ray, J.—This petition by the husband James Fredrick Rowland is directed against certain orders of a Magistrate before whom a proceeding u/s 488 of the Code of Criminal Procedure is pending at the instance of his divorced wife Mrs. Raynah Rowland Nee Glover. It appears that on 12-4-1954 there was a decree of divorce by the District Court which was confirmed by the Patna High Court on 22-3-1955. The petition u/s 488 of the Code of Criminal Procedure for the maintenance not of the wife herself, but of a child about 13 years old who is now in England was filed on 23-7-1956. Thereafter, the husband, the present petitioner filed a suit on 11-3-1957 in the Muzaffarpur court. That Court passed an interim order u/s 44 of the Indian Divorce Act directing the petitioner not to proceed with this proceeding u/s 488 of the "Code of Criminal Procedure. When the learned Magistrate, on that order being shown to him, wanted to proceed with the case in spite of the order, this petition was filed on behalf of the husband.

2. The first point raised on behalf of the petitioner is that in view of Section 1 (2) of the Code of Criminal Procedure the proceeding u/s 488 of the Code of Criminal Procedure cannot go on because of the provisions of Section 44 of the Indian

Divorce Act. The relevant portion of Section 1 (2) of the Code of Criminal Procedure is as follows :

"In the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force."

3. It is argued that this means that in view of Section 44 of the Indian Divorce Act, Section 488 of the Code of Criminal Procedure is inapplicable to persons to whom the Indian Divorce Act applies. I think the contention is totally unfounded. The clear meaning of this part of Sub-section (2) is that if there is no specific provision to the contrary, nothing that there is in the Code of Criminal Procedure will affect any special provision in force, or in other words, there being nothing to the contrary the provisions of Section 188 of the Code of Criminal Procedure will have no effect on Section 44 of the Indian Divorce Act. There is nothing here even to suggest that the proceedings u/s 44 of the Indian Divorce Act will have any effect on the proceeding u/s 488 of the Code of Criminal Procedure.

4. The next point raised on behalf of the petitioner is that as the child is admittedly in England, it is to be considered by the court whether an order of maintenance in her favour can be made by an Indian Court. The jurisdiction of the Court is determined by the residence of the Parties and admittedly both the wife who applied for the maintenance of her husband (sic) and her ex-husband the present petitioner, are residents of India within the jurisdiction of the Magistrate and both submitted to the jurisdiction of the Court. There is nothing in the Code of Criminal Procedure to suggest that if a child is outside the jurisdiction of the Court; or even out of India, no order can be made for her maintenance on the ground that she is out of India. The question in a case of this nature is really a question of the form of the order and how the maintenance ordered by the Court is to be made available to her. That is a matter for, the Court before which the proceedings are pending.

5. The third point argued is that in view of the interim order of the Muzzaffar Court, the learned Magistrate should have adjourned the proceedings instead of going on with the same. Section 44 of the Indian Divorce Act entitles the court to make from time to time all such orders and provisions with respect to the custody, maintenance and education of the minor child, the marriage of whose parents was the subject of the decree, or for placing such child under the protection of the said court, as might have been made by such decree absolute or decree (as the case may be) or by such interim orders as aforesaid. It does not entitle the court to make an order directing one of the parties not to proceed with another proceeding pending in another court. Prima facie, therefore, this order of the Muzzaffar Court was without jurisdiction. In any event, it was not binding on the criminal court where the proceedings u/s 488 at the instance of the wife were pending. There was therefore, no obligation on that court to adjourn that proceeding. It is clear that the husband was trying to delay these

proceedings, for his application u/s 44 of the Indian Divorce Act was filed long after the institution of the present proceedings against him for maintenance of the daughter.

6. As all the three points raised on behalf of the petitioner fail, the petition must be dismissed and the Rule discharged.

7. The Magistrate will now try to expedite the disposal of the proceedings.