
(1930) 05 CAL CK 0018
In the Calcutta High Court

Krishna Gobinda Chatterji

APPELLANT

Vs

Mt. Kishoribala Debi

RESPONDENT

Date of Decision : 02-05-1930

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488

Citation : AIR 1930 Cal 753 : 129 Ind. Cas. 103

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—This is a rule obtained by the petitioner Krishna Gobinda Chatterji calling upon the District Magistrate of Bankura and also on the opposite party Kishoribala Debi, the petitioner's wife, to show cause why an order u/s 488, Criminal P.C., directing the petitioner to pay a monthly maintenance of Rs. 18 to the opposite party for a certain time and thereafter to pay a monthly maintenance at a reduced rate should not be set aside. An appeal was filed against this order before the Sessions Judge of Bankura and was dismissed by him. It appears that subsequent to the application for an order u/s 488, Criminal P.C., the petitioner instituted a suit in the Munsif's Court seeking restitution of conjugal rights. While the application was still pending he obtained an order from the Munsif restraining the opposite party from proceeding with her application. In spite of the injunction the Magistrate was of opinion that he had jurisdiction to entertain the opposite party's application and made the order to which I have referred. The learned Sessions Judge took the same view.

2. The ground on which the rule has been granted is that the Sessions Judge erred in holding that the Sub-Divisional Magistrate had jurisdiction to make the order he had made. I have read the judgment of the Sessions Judge which has dealt with the matter at some length. It is clear to me that in itself it is unsatisfactory as a justification of the order made by the Magistrate. It is conceded that the injunction granted by the Munsif was a temporary injunction, but the learned Judge has founded his decision upon a consideration of Chap. 10,

Specific Relief Act, which is only concerned with perpetual injunction, as is indicated by Section 53 of the same Act. The law as regards temporary injunction is to be found not in the Specific Relief Act but in the Civil Procedure Code. The relevant order of that Code is Order 39. It is conceded that Rule 1 of that order has no application, but it is said that this injunction was made in the exercise of the jurisdiction which the Munsif had by reason of Section 2. The petitioner I think rightly says that neither the Magistrate and Sessions Judge nor this Court sitting in criminal revision can question the propriety of the injunction provided it was made with jurisdiction. In my opinion however on the face of it the injunction is one which the Munsif had no jurisdiction to grant and must be treated as a nullity. My attention has not been directed to any provision of law by which the injunction can be justified if it does not fall within the purview of Section 2, Sub-section 1. Now the suit in which the temporary injunction is granted must according to that sub-rule be a suit for restraining the defendant from committing a breach of contract or other injury of any kind. I am extremely doubtful whether on the widest interpretation of the language the suit whereby the plaintiff seeks to enforce his conjugal rights against the defendants can be held to be a suit of the nature contemplated by the sub-rule.

3. But on the assumption that it can be considered as a suit of such a nature I do not think that the injunction granted by the Munsif is such an injunction as the sub-rule contemplates, for the injunction must be one to restrain the defendant from committing breach of contract or injury complained of or any breach of contract or injury of a like kind arising out of the same contractor relating to the same property or right. In my opinion that does not cover in the circumstances of the case an injunction restraining the defendant from proceeding with her application u/s 488, Criminal P.C. I do not think that the presumption of such an application is a breach of the matrimonial contract or that it is covered by the other words of the sub-rule to which I have referred in detail. To my mind the Munsif had no jurisdiction to restrain the opposite party by an injunction from pursuing her remedy in the criminal Court; and I am of opinion that the Magistrate and the Sessions Judge were right in treating the order made by the Munsif as a nullity. The Rule is discharged.