

(1972) 09 GUJ CK 0014
In the Gujarat High Court

Manorama Prahladbhai Manore

APPELLANT

Vs

Prahladbhai Arjunbhai Manore and Another

RESPONDENT

Date of Decision : 18-09-1972

Acts Referred:

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

Citation : (1973) CriLJ 1864 : (1973) 1 GLR 526

Hon'ble Judges : Rane, J

Bench : Single Bench

Judgement

Rane, J.—This application in revision is directed against the order passed by the learned City Magistrate, 9th Court, Ahmedabad, on 20-4-1972 rejecting the application of the wife for the enforcement of the order of maintenance passed u/s 488 (1) of the Criminal Procedure Code. The wife had filed an application for maintenance u/s 488 (1) of the Criminal Procedure Code. It appears that, during the pendency of the proceedings, the parties compromised the matter. According to the compromise between the parties, the husband admitted that, he had made allegations as regards adultery against his wife. The charge of cruelty was also admitted by him. He agreed to pay Rs. 185/- per month as maintenance to the petitioner and her child. On the basis of the above compromise, the learned City Magistrate K. H. Damani, passed the following order:

Parties submit compromise and I order to pass maintenance order in terms of compromise and order that opponent to pay Rs. 185/- p. m. as maintenance to the applicant including for maintenance of child from 25-11-71. Each party to bear its own cost.

As the husband failed to pay maintenance in accordance with the above order of the learned City Magistrate, the wife filed an application being Misc. Application No. 16 of 1971 for the enforcement of the above order u/s 488 (3) of the Criminal Procedure Code. The above application was also heard by the learned City Magistrate K. H. Damani. Even though, the order on the basis of the

compromise was passed by him, he took the view that, that order was not legal and hence, it could not be enforced. Being aggrieved by the above order, the wife has come in revision.

2. The reasoning adopted by the learned City Magistrate for coming to the above conclusion is that, there is no provision similar to Order 23 of the Civil Procedure Code, in the Criminal Procedure Code, under which an order could be passed in terms of the compromise arrived at between the parties. His further observations in the matter are:

So it appears that Court has no power to pass order in terms of compromise u/s 488. Cri. P. Code. But the Court has passed such order and the matter pending is for execution of such order. u/s 488, Clause I, a duty is cast on Court to decide the neglect or refusal of husband to maintain his wife, so Court can exercise power to award maintenance only on a condition that there is neglect or refusal by the husband to maintain his wife.

Referring to the admissions made by the husband in the petition of compromise, he has observed:

He does not say that this allegation is true and Court has not applied its mind to find out if this allegation is true or false." He therefore rejected the application. If, according to him, the Court had no jurisdiction to decide the matter on the basis of the compromise arrived at between the parties, he should have given thought to that point while passing the order on the basis of the compromise. It, however, appears that, acting on the compromise he passed the order directing the payment of the maintenance as shown in the order to the petitioner and her child. He has not referred to any authorities in support of his view that, the order passed on the basis of the compromise cannot be enforced u/s 488 (3) of the Criminal Procedure Code. There is nothing in Section 488 of the Criminal Procedure Code to show that, the Court cannot pass an order on the basis of the compromise arrived at between the parties. If the allegations made by the wife in the petition are admitted by the husband, nothing further remains to be done in the matter by the petitioner and the Court is empowered to pass appropriate orders on the basis of the admissions made by the husband. In the present case also, it appears that, the husband has admitted the allegations made by the wife against him. Under these circumstances, the learned Magistrate was quite justified in passing the order as regards maintenance on the basis of the petition for compromise filed by the parties and in that case the order is enforceable u/s 488 (3) of the Code. If any authority is needed on the point, it is provided by the decision in the case of Debjani Biswas Vs. Rasik Lal Biswas, . In the above case, it has been held:

In proceedings u/s 488 where a petition of compromise fixing the maintenance allowance is filed by both the parties the proper order to be passed by the Magistrate in such a case is "petition of compromise filed. Order in terms of compromise" and not "Case amicably settled. Petition of compromise filed. Rule

discharged" and an order lawfully made by a Magistrate u/s 488 whether on compromise or otherwise must be deemed to be enforceable in the manner provided by Section 488 (3).

3. In view of what is stated above, it becomes evident that, the reasoning adopted by the learned City Magistrate is erroneous and looking to all the circumstances of the case it appears that, he has acted in a capricious manner while rejecting the application for enforcement of the order of maintenance. The learned Assistant Government Pleader also agrees that the order in question cannot be sustained. The above order therefore should be set aside.

4. The application is therefore allowed and the order rejecting the application is set aside. The matter is remanded to the trial Court with the direction that the learned City Magistrate should dispose of the matter according to law in the light of what is stated above.