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**(1972) 03 AHC CK 0004**  
**In the Allahabad High Court**

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|-------------------------------------|------------|
| Ram Lotan Singh and Manni Lal Singh | APPELLANT  |
| Vs                                  |            |
| Smt. Vidya Debi                     | RESPONDENT |

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**Date of Decision :** 22-03-1972

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 488

**Citation :** (1973) CriLJ 318

**Hon'ble Judges :** G.S. Lal, J

**Bench :** Single Bench

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## Judgement

G.S. Lal, J.—The facts of the case giving rise to this revision are that on the application of the opposite party Smt. Vidya Debi u/s 488 Cr.P.C. the learned Magistrate passed an order for allowing her maintenance at the rate of Rs. 40/- per month against the applicant Ram Lotan Singh, husband of the opposite party. The revision filed by Ram Lotan Singh was dismissed by the Sessions Judge of Hardoi. It appears from the order of the learned Magistrate which gives the facts, that in 1961 the parties were married according to the Hindu Law and lived as husband and wife but the applicant began to maltreat the opposite party and this was alleged to be because he had contracted illicit relationship with another lady and this was objected to by the opposite Party. In 1967 there was a Panchayat and before the panchayat Ram Lotan Singh entered into an agreement with his wife. According to the learned Counsel for the applicant, the agreement was that Ram Lotan Singh would properly maintain his wife and that in case he again maltreated her he would be liable to pay maintenance to her at the rate of Rs. 40/- per month. In the application u/s 488 which was made in August, 1970 the opposite party alleged that after two months of the compromise the applicant again began to beat and maltreat her and to go to the woman with whom he had illicit connection and that he had also turned her out after beating. The opposite party then began to live with her father. The learned Magistrate held that there had been maltreatment and Smt. Vidya Debi was entitled to maintenance. After considering the relevant facts he held that a sum of Rs. 40/- per month should be paid by Ram Lotan Singh to his wife Smt. Vidya Devi. The learned Sessions

Judge also considered the contentions raised on behalf of Ram Lotan Singh before him but agreed with the order of the learned Magistrate.

2. In the revision under consideration learned Counsel for the applicant-revisionist has argued that the Courts below have committed an error of law in the awarding of maintenance allowance u/s 488 when there existed an agreement between the parties under which Smt. Vidya Debi was to receive maintenance at Rs. 40/- per month in case of maltreatment again. According to the learned Counsel, the criminal Court had no jurisdiction u/s 488 Cr.P.C. to award maintenance in the face of the existence of an agreement. In support of this argument learned Counsel has cited a decision of the Lahore High Court in *Budhu Ram v. Khem Devi* AIR 1926 Lab 469. There an application had been made by the wife u/s 488 Cr.P.C. for maintenance. A compromise was entered into by which the husband agreed to Pay Rs. 12/- per mensem. This agreement was recorded by the order of the Magistrate. The wife then applied to recover the arrears alleged to be due under the said order and the Additional District Magistrate ordered warrants of attachment to issue for the arrears of maintenance. The husband then applied for revision, basing his contention on two rulings of the Chief Court which noted also another Division Bench ruling which appeared "to be on all fours with the case in the revision before the Lahore High Court. The very short judgment in the case simply states that once a compromise was entered into to pay maintenance there was no refusal to maintain on the part of the husband and therefore Section 488 has no longer application. An order for issue of attachment regarding such a compromise was held to have been passed without jurisdiction under that section. It was also observed that the wife had her remedy by way of a civil suit on the compromise she entered into. The revision was allowed.

3. Firstly, I do not see how this decision is applicable to the facts of this case. There a proceeding had been initiated u/s 488 and it was in the course of that proceeding that a compromise was entered into which was recorded by the criminal Court. It appears that the criminal Court simply recorded the compromise and consigned the case without passing any order of its own for the amount under the compromise being paid to the wife by the husband. In that situation the criminal Court was certainly without jurisdiction in the matter of recovering the amount due under the compromise by proceedings u/s 488 Cr.P.C. Such recovery could have been made only if the court had passed an order allowing maintenance to the wife from the husband at the agreed rate. In the instant case Smt. Vidya Debi did not apply for recovery of any arrears. She applied for award of maintenance u/s 488 Cr.P.C. It was therefore a proceeding u/s 488 Cr.P.C. for an order fixing maintenance allowance.

4. If the Intentions behind the decision cited by the learned Counsel were but I do not agree that it was so that once a compromise is entered into between the parties it means that there is no refusal to maintain and in that case the provisions of Section 488 Cr.P.C. become inapplicable and the only course open

to the wife would be to sue on the agreement. I do not agree. That is also not what has been expressly said in the decision. In any case, Section 488 Cr.P.C. speaks not merely of refusing to maintain his wife but also to neglect in maintaining his wife by the husband. An agreement simply means that the husband is willing to maintain his wife but if the wife is not living with him and is living separate and if he fails to pay any maintenance allowance it again becomes refusal to maintain her and in any case he neglects to maintain. Such was the case here because Smt. Vidya Debi had been living with her father and it is not the case of Ram Lotan Singh that he had been providing any maintenance to her at her father's house. Whether she was entitled to live at her father's house was no doubt a matter to be considered by the Magistrate before whom the application u/s 488 Cr.P.C. was given. That matter was duly considered and is not in controversy here. No doubt Smt. Vidya Debi could have chosen to rely on the agreement and Instituted a suit but her statutory rights u/s 488 had not been taken away because of an agreement of the nature referred to above and there is no reason why she cannot fall back upon this statutory right in preference to adopting a more onerous and doubtful course of suing on the alleged oral agreement.

The revision is found to have no merit and is dismissed summarily.