

(1960) 02 MP CK 0014

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 454 of 1959

State of Madhya Pradesh

APPELLANT

Vs

Mst. Shrimati Deobati and Another

RESPONDENT

Date of Decision : 23-02-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488
Hindu Adoptions and Maintenance Act, 1956 — Section 18

Citation : AIR 1960 MP 245 : (1960) CriLJ 1096 : (1960) ILR (MP) 150 : (1960) JLJ 686 : (1960) 5 MPLJ 817

Hon'ble Judges : Shiv Dayal, J

Bench : Single Bench

Advocate : D.P. Verma, (for No. 1); Y.P. Verma, (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.

This is a reference under Section 438 of the Cr. P. C. made by the Additional Sessions Judge, Jabalpur recommending that the order passed by the Magistrate be set aside and Shrimati Deobati be granted at least Rs. 20 p.m. and her daughter Rs. 5/ p.m. as maintenance with effect from 24-2-1958 (the date of her application under Section 488 of the Cr. P. C.).

It appears that Shrimati Deobati was married to Dashrathprasad in the year 1948. Thereafter in the year 1953 Dashrathprasad took another wife it seems that there arose some dispute between the husband and the first wife which led to a suit for restitution of conjugal rights instituted by the husband. A decree was passed in that suit on the basis of a compromise arrived at between the parties. The terms of the compromise were these:

(i) That the defendant shall restitute to the plaintiff the conjugal company by the defendant No. 3.

(ii) That the plaintiff shall keep the defendant No. 3 separate from his other wife

and his parents except on special occasions and festivals.

(iii) That the plaintiff shall not illtreat the defendant No. 3 hereafter.

(iv) That the plaintiff shall give to the defendant the ornaments described at the foot of the compromise petition before her conjugal company is restituted to him.

(v) That the plaintiff shall not refuse to send the defendant No. 3 to her parents when called but the defendant No. 3 shall also be bound to go to her parents only with the consent and approval of the plaintiff.

(vi) That the defendant No. 3 shall become entitled to claim: maintenance in case the plaintiff commits breach of any of the above terms and the plaintiff shall then be bound to give maintenance to her: and

(vii) That the parties shall bear their own costs as incurred by them except that the plaintiff shall pay Rs. 50/- to the defendant No. 3 towards the costs incurred by her.

It is an undisputed fact that Shrimati Deobati resumed living with her husband. Thereafter again the couple broke out and On 9-12-1957 Deobati gave birth to a daughter.

On 24-2-1958, Deobati made an application under Section 488 of the Cr. P. C. alleging that she was turned out by her husband from his house in March 1957 and was refusing to maintain her and further that he had already taken a second wife in the year 1953. She, therefore, claimed maintenance of Rs. 50/ p.m. for herself and Rs. 25/ p.m. for the daughter. Dashrathprasad resisted this application by his written statement and denied any neglect or refusal on his part. He stated that he never refused to maintain her and was "ever ready and is still ready to live with her". Deobati was accused of having left him. The learned Magistrate after recording evidence of the parties dismissed the application holding that she could not prove either refusal or neglect on the part of the husband.

Shrimati Deobati went in revision and the Additional Sessions Judge, Jabalpur has found that in view of Sub-section (3) of Section 488 of the Cr. P. C. the application under Section 488 should have been allowed.

Shri Y. P. Verma appearing for Dashrathprasad vehemently opposes the reference. Learned counsel urges that Shrimati Deobati was aware of the second marriage, that she had agreed to it as is evident from the compromise decree which was passed in the suit for restitution of conjugal rights, that the decree passed by the Civil Court cannot be set at naught just by making an application under Section 488 of the Cr. P. C., that she has her remedy in the Civil Court, that the finding of fact arrived at by the Magistrate must be given due weight and that there is no evidence on the record to believe her allegation of neglect or refusal on the part of the husband. Learned counsel relies on State v. Mt. Anwarbi AIR 1953 Nag 133, State of M. P. v. Mst. Sbrimati 1958 MPLJ 36 : Cri

Revn. No 366 of 1957, D/- 23-1-1958, Bela Rani Chatterjee Vs. Bhupal Chandra Chatterjee, , Mst. Roshan Bano v. Azim AIR 1943 Lah 59 and Jiwan Singh Vs. Subedar and Another, . A great deal of stress is laid on the fact that a decree for restitution of conjugal rights was passed and Shrimati Deobati was bound to obey that decree and to live with him.

Having given my anxious consideration to the arguments of the learned counsel I have formed the view that this reference must be accepted. In the present case there is no doubt that the first requirement of Section 488 of the Code of Criminal Procedure is that there must be neglect or refusal on the part of the non-applicant and that it is not sufficient for the purposes of Section 488, Cr. P. C., that the husband contracted marriage with another wife. The fact of having a second wife entitles the first wife to refuse to live with the husband and at the same time claim maintenance under Section 488 of the Cr. P. C., but then the first condition, that he neglects or refuses to maintain her has to be established. The mere fact that a second wife has been taken does not necessarily mean that the husband neglects or refused to maintain the first wife. A denial of connubium in the sense of marital intercourse or refusal of consortium in the sense of avoiding society of the spouse may prove the husband's neglect of the first wife. But a distinction must be drawn between "neglecting her" and "neglecting to maintain her". Section 488 relates only to a neglect to maintain. According to the personal law of the parties, it is the right of the wife to be maintained by the husband and this right is an incident of the status or state of matrimony. The obligation of the husband to maintain her is personal in character and arises from the very existence of their relationship by marriage. Notions of Hindu society have changed and it is the Parliament which has expressed what the current notions are. They are deposited in Section 18 of the Hindu Maintenance Act, 1956 which provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance inter alia if he has any other wife living. She is disentitled to that right if she is unchaste or ceases to be Hindu.

It is unnecessary for the purposes of this case to dilate upon these rights any further because Dashrathprasad's notice dated 17-6-1957, marked Ex. P. 1, and admitted by him in his statement, clearly expresses a refusal to maintain her. In this notice Deobati has been accused of committing breach of the compromise which was arrived at between the parties in the suit for restitution of conjugal rights and she was asked to explain several things. However, there was no allegation of unchastity. But then Clauses (5) and (6) of that notice which, it will be useful to reproduce here, undoubtedly show that he refused to maintain her:

?5? rql gekjs ikl jgr gq, gekjh tku dks [krjk gS tSlk fd rqu ,d ckj [kkus ihus esa Ny diV fd;k ftlls eSa ejrs ejrs cpkA bldh ek lcwrh esjs ikl gSA bl fo"K; esa D;k dguk gS\\ tokc nksA

?6? bl fy;s esa rqEgs viuh L=h cukdj ugh j[kuk pkgRkA

This supports her statement. In the notice there is no offer to maintain her. In

this situation the argument of Shri Y. P. Verma that the husband never neglected or refused to maintain her but was and is still ready and. willing to maintain her cannot be accepted. It is an impossible situation that in these circumstances the husband wants her to live with him or the wife can live with him. Having perused the reports of the cases cited on behalf of the husband, I find that they are not applicable to this case. As regards the decree for restitution of conjugal rights it is open to Dashrathprasad to execute it and seek his remedy in the Civil Court if he is advised that it can be of any relief to him. I need not express any opinion about it in these proceedings. In Jiwan Singh Vs. Subedar and Another, it was held:

"The decision in a suit against the wife for restitution of conjugal rights is equivalent to a decision by a competent Civil Court that the wife had no sufficient reason for refusing to live with her husband and the criminal Court cannot inquire into any allegations of failure or neglect to maintain prior to such decision."

"If the wife chooses for purposes of some advantage to herself not to live with her husband she cannot say that it is the husband who has neglected her or refused to maintain her."

That case is inapposite here. This is not a case where the criminal Court in proceedings u/s 488 Cr. P. C., is enquiring into any allegations of failure or neglect to maintain "prior to" the decision in the Civil suit. As regards the last observations quoted above, firstly I have my own doubts whether they are in accord with the present notions of the Hindu society as reflected in Section 18 of the Maintenance Act, 1956 and in the proviso to Section 488(3) of the Cr. P. C. Secondly, this is not a simple case of the wife choosing to live apart but by Ex. P. I he refused to maintain her as his wife. As regards the daughter, she was born in 1957 and she has no concern with the decree for restitution of conjugal rights in any way. The liability of the father to maintain her is quite separate from it. For these reasons I am satisfied that a case under Section 488 has been fully made out and the application must be allowed.

In conclusion Shri D. P. Verma, learned counsel for Shrimati Deobati appealed to me that the amount recommended in the reference is too inadequate to afford subsistence in these days of dearth. In the first place, this prayer should have been made earlier by an application so that notice could be given to the other side; moreover it appears from the record that the income of the husband is Rs. 63/ p.m. by way of salary as he is a school-teacher. Besides that income, he asserted in his written-statement that his income by agriculture was about Rs. 50/ per year as he had to sub-let the land being personally unable to cultivate it. I am asked to believe the statement of Deobati wherein she stated that Dashrathprasad and his father had a larger holding than what he had admitted. Learned counsel could not point out to me any evidence to show that Dashrathprasad was joint with his father nor any evidence to support her statement.

The result is that the reference is accepted and Dashrathprasad is directed to pay maintenance of Rs. 20/ p.m. to Shrimati Deobati and Rs. 5/ p.m. for the daughter with effect from 24-2-1958, regularly by 10th day of every calendar month.