CRIMINAL REVISION.

Before Patterson J.

BOGIS MANGATI

v.

APPLAMA.*

1932

Feb. 23.

Maintenance—Marriage—Strict proof—Code of Criminal Procedure (Act V of 1908), s. 488.

Where a marriage between people of another province was alleged to have taken place some 17 or 18 years ago and the priest, who was said to have celebrated the marriage, was dead and the parties were reputed to be man and wife, the husband saying so to his landlord and the wife's passport stating the same, it would not be reasonable to expect very strict proof of the actual celebration of the marriage in a proceeding under section 488 of the Code of Criminal Procedure for maintenance.

RULE obtained by the husband, defendant.

The facts of the case appear fully in the judgment.

Maneendralal Mukherji for petitioner (after stating the facts). Under section 488 of the Code of Criminal Procedure, the opposite party is not entitled to maintenance, unless her marriage with the petitioner is proved to have been celebrated with due and strict performance of all the rites and ceremonies required under the Hindu law. The opposite party not having proved this, the order for maintenance is liable to be set aside. See *In the Matter of the Petition of Din Muhammad* (1) and *In re Gulabdas Bhaidas* (2).

Amiruddin Ahmad for the opposite party. Section 488 does not require strict proof of the ceremonies and rites by which the marriage was performed. What it requires the magistrate to find is that the opposite party was the wife of the petitioner and the magistrate had sufficient materials before him to come to that finding. The Allahabad

*Criminal Revision, No. 50 of 1932, against an order of S. C. Nandi, Hony. Presidency Magistrate of Calcutta, dated Dec. 21, 1931.

(1) (1882) I. L. R. 5 All. 226, 229. (2) (1891) I. L. R. 16 Bom. 269.

1932

Bogis Mangati v. *Applama.*

and Bombay cases cited do not require the magistrate to do more than this. The *factum* of marriage having been proved in this case, the court will presume the marriage to be valid in law and also that the necessary ceremonies have been performed. *Mouji Lal* v. *Chandrabati Kumari* (1). The opposite party was recognised as the petitioner's wife by the landlord of the house occupied by these parties after their marriage and was described as such in an important official document, *viz.*, the passport issued to her in 1924, when she was going to England. All these facts give rise to a presumption of a valid marriage, which has not been rebutted. The order is perfectly valid and in accordance with law.

Mukherji, in reply. The ruling cited is a decision in a civil suit and does not apply to criminal cases.

PATTERSON J. This Rule is directed against an order of maintenance passed under section 488 of the Code of Criminal Procedure. The only question for determination is whether the learned magistrate was right in holding that the marriage of the petitioner to the opposite party had been proved. It is clear from the evidence that the parties had lived together as man and wife for many years, and it appears that, in a passport issued to the opposite party some eight years ago, she was described as the wife of the petitioner. There is also the evidence of the landlord of the house in which the parties lived for many years as man and wife, to the effect that the petitioner had stated to him that he had been married to the opposite party in *nikâ* form, while witness Kali says that, if there was any marriage between the parties, it was a *nikâ* marriage. The petitioner's first statement before the magistrate was merely to the effect that he did not marry the opposite party in the usual form, though his subsequent statement was to the effect that he never married her at all. The only

(1) (1911) I. L. R. 38 Calc. 700; L. R. 38 I. A. 122.

1932

Bogis Mangati v. *Applama.*

Patterson J.

evidence regarding the actual celebration of the alleged marriage is that of the opposite party herself, and the question is whether the magistrate was justified in relying upon this evidence, taken together with the circumstantial evidence referred to above.

The parties are both Madrasis of the domestic servant class, and are probably people of low caste, among whom *nikâ* marriages are recognised. The marriage, if it took place at all, took place some 17 or 18 years ago, and there is evidence that the priest who celebrated the marriage is dead. In these circumstances, it would not be reasonable to expect very strict proof of the actual celebration of the marriage, and I am not prepared to hold that the magistrate was wrong in relying on the evidence of the opposite party and in finding that the marriage had been duly proved.

The Rule is therefore discharged.

Rule discharged.

G. S.