

CRIMINAL REVISION.

Before Edgley J.

INDU BALA DEBI

v.

SATCHID PRASAD.*

1938

Dec. 22.

Maintenance application—Magistrate's jurisdiction—Code of Criminal Procedure (Act V of 1898), s. 488, sub-s. (8).

The words "or is", in sub-s. (8) of s. 488 of the Code of Criminal Procedure, 1898, indicate that a Magistrate is competent to entertain an application for maintenance against a person who works for gain within the territorial jurisdiction of such Magistrate although he may not have a permanent residence within such jurisdiction.

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The material facts of the case appear from the judgment.

Asoke Mukherjee for the petitioner. The opposite party comes to his office at 42, Chowringhee Road. The words "or is", in sub-s. (8) of s. 488 of the Code of Criminal Procedure clearly gives jurisdiction to the Chief Presidency Magistrate, because 42, Chowringhee Road is within the jurisdiction of the Chief Presidency Magistrate. The learned Magistrate clearly erred in deciding the question of jurisdiction.

Satindra Nath Mukherjee and *Samarendranath Mukherji* for the opposite party. There is no decided case on the point and so the question must be decided according to the rules of interpretation. I submit the words "resides or is", in sub-s. (8) of s. 488 of the Code of Criminal Procedure connote that the proceedings under this section may be taken against any person in any district where he has permanent or temporary residence. By putting a comma after the word "is" and not putting that comma between the

*Criminal Revision, No. 1263 of 1938, against the order of R. Gupta, Chief Presidency Magistrate of Calcutta, dated Oct. 21, 1938.

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word "resides" and the words "or is" the legislature clearly meant that the meaning of the word "is" must be akin to the ordinary meaning of the word "resides". The ordinary grammatical construction would lead one to the same conclusion. If then the word "is" has a meaning akin to the ordinary meaning of the word "resides", then the next point is what is the ordinary meaning of the word "resides". I submit the word "resides" denotes a place where an individual eats, drinks and sleeps. In this respect I rely on the case of *Kumud Nath Roy Chowdhury v. Jotindra Nath Chowdhury* (1). The opposite party certainly does not eat, drink and sleep in his office at 42, Chowringhee Road. Hence the learned Chief Presidency Magistrate was quite right in holding that he had no jurisdiction to entertain the application for maintenance. The question can be tested from another point of view. The maintenance proceeding is *quasi-civil* in nature. Section 20, cl. (a), of the Code of Civil Procedure, 1908, states the forum of the suit as the place where the defendant "resides or carries on business or personally works for gain". Why did not the legislature use the same words in sub-s. (8) of s. 488 of the Code of Criminal Procedure when it was amended in 1923? This use of different words in two Codes means that there is a difference in meaning. This difference entirely goes if the meaning of word "is" given by the petitioner be accepted. Again if the word "is" has a meaning which is sought to be given to it by the petitioner then that would include what is meant by the word "resides" and the use of the word "resides" in the section becomes superfluous. It is an accepted rule of interpretation that the legislature does not use superfluous words. This also supports my contention.

EDGLEY J. In this case the petitioner filed an application for maintenance under s. 488 of the Code of Criminal Procedure in the Court of the Chief

(1) (1911) I. L. R. 38 Cal. 394.

Presidency Magistrate, Calcutta. Her case was that her husband was employed under the Bengal Home Industrial Association at No. 42, Chowringhee Road, Calcutta, on a salary of Rs. 100 per mensem, and that he had neglected to maintain her. She maintained that his present total income amounted to about Rs. 300 per mensem.

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The learned Chief Presidency Magistrate rejected the petitioner's application on the ground that he had no jurisdiction to entertain it. In his order he stated with reference to the construction of s. 488 (8) of the Code of Criminal Procedure :—

In my opinion, "is" refers only to cases where the opposite party may have no permanent residence, but only a temporary residence. If he has a permanent residence, the Court within which that is situated is the proper forum.

Admittedly, in this case, the opposite party has a permanent residence within the jurisdiction of the Police Magistrate of Alipore. The only point for consideration, therefore, is whether or not the language which has been used in sub-s. (8) of s. 488 of the Code of Criminal Procedure is sufficiently wide to confer upon the Chief Presidency Magistrate jurisdiction to deal with an application of this sort, in view of the fact that the opposite party is employed under the Bengal Home Industrial Association within the jurisdiction of the Chief Presidency Magistrate. In my view, the intention of the legislature in using the words "where he resides or is, or where he last resided with his wife" in sub-s. (8) of s. 488 of the Code was to make it as easy as possible for an aggrieved person to obtain a maintenance under the provisions of this section. Obviously, it was intended in the first place to confer jurisdiction upon the proper authorities within the district in which the permanent residence or home of the opposite party happened to be situated. But, in my view, by using the words "or is" the further intention appears to have been that proceedings might also be taken against opposite parties, who had no permanent residence within the

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jurisdiction of the Magistrate concerned, but who might be easily found there. This expression is certainly in my opinion, sufficiently wide to confer jurisdiction upon the Chief Presidency Magistrate in a case in which the opposite party works for gain within the jurisdiction of his Court, even although he may not have a permanent residence within such jurisdiction.

In this view of the case the order of the learned Chief Presidency Magistrate, dated October 21, 1938, is set aside and he is directed to deal with the petitioner's application according to law.

The Rule is made absolute in these terms.

Rule absolute.

N. C. C.