

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

QUEEN-EMPRESS

v.

MANNATHA ACHARI.*

Criminal Procedure Code—Act X of 1882, ss. 4, 488—‘Adultery’—Indian Penal Code—Act XLV of 1860, s. 497.

A wife petitioned for maintenance for herself and child against her husband under section 488 of the Criminal Procedure Code. The husband did not refuse to maintain his wife, but the petitioner refused to live with him as he kept a concubine :

Held, that the word ‘adultery’ in section 488 of the Criminal Procedure Code must, by virtue of section 4 of the Code, be construed with reference to the definition of the term in section 497 of the Indian Penal Code. Consequently a husband’s immorality which does not amount to ‘adultery’ or involve the degradation of a married woman being brought into the society of a concubine is not sufficient ground for a wife’s refusal to live with her husband.

An offer to maintain a wife must be an offer to maintain with the consideration due to her position as a wife. *Marakkal v. Kandappa* (1) cited.

Per Best, J.—It is very doubtful if the framers of section 488 of the Code of Criminal Procedure intended the word ‘adultery’ as used therein to have the limited meaning given to it in the Penal Code. The wrong done to the wife is in no way affected by the circumstance of her husband’s concubine being married or unmarried or, in case of her being married, whether it is with or without her husband’s consent or collusion that she is living in such concubinage. In face however of section 4 of the Criminal Procedure Code, no other interpretation of the term ‘adultery’ is possible than the limited interpretation contained in the Penal Code.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by M. Hammick, Acting District Magistrate of South Arcot.

The facts of the case appear sufficiently for the purpose of this report from the foregoing and from the judgment of the High Court.

Parties were not represented.

MUTTUSAMI AYYAR, J.—The term ‘adultery’ in section 488, Criminal Procedure Code, must be construed with reference to its definition in section 497 of the Indian Penal Code. There is no

* Criminal Revision Case No. 499 of 1893.

(1) I.L.R., 6 Mad., 371.

finding in the present case that the concubine is a married woman, and the Joint Magistrate seems to suppose that every illicit connection with a woman, whether she is married or not, and whether, if married, with her husband's consent or connivance or not, is adulterous. This view cannot be accepted as the legal conception of adultery, and the ground on which the Joint Magistrate rests his decision cannot be supported without further inquiry. The complainant stated in her evidence that her husband insisted on her getting her meals from the concubine, and it was held in *Marakkal v. Kandappa* (1) that the offer to maintain must be an offer to maintain with the consideration due to her position as wife. A question may therefore arise, if the complaint is well founded, whether the offer made is sufficient within the meaning of the proviso of section 488. In his explanation to the District Magistrate the Joint Magistrate states that he has never followed the ruling of the High Court in criminal revision case No. 574 of 1884, because, in his opinion, it is directly opposed to the wording of the section and has always seemed to him unintelligible. I would here point out to the Joint Magistrate that it was his duty to have either followed the ruling of the High Court, or if he doubted its correctness, to have referred the matter to that Court for reconsideration. There may be cases in which the husband may not bring the concubine into the family house, or may arrange for the concubine not coming into contact with his wife and for the society of the former not being forced on the latter. I am not prepared to hold that either the husband's immorality, which does not amount to adultery or involve the degradation of a married woman being brought into the society of a concubine, is sufficient ground for the wife's refusal to live with her husband. I would set aside the order of the Joint Magistrate and direct him to re-hear the case and pass fresh orders with reference to the foregoing observations.

BEST, J.—It seems to me to be very doubtful if the framers of section 488 of the Code of Criminal Procedure intended the word 'adultery' as used therein to have the limited meaning given to it in defining the offence of adultery in the Penal Code. The offence is against the husband, as is recognized in section 199 of the Code of Criminal Procedure, which prohibits the Court from

(1) I.L.R., 6 Mad., 371.

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taking cognizance of such offence except in the complaint of the husband or of some person on his behalf. Hence the necessity for the existence of a husband and absence of consent or connivance on his part to constitute such offence. But so far as a wife seeking an order for maintenance under chapter XXXVI of the Code of Criminal Procedure is concerned, the wrong done to her is in no way affected by the circumstance of her husband's concubine being married or unmarried, or in case of her being married, whether it is with or without her husband's consent or collusion that she is living in such concubinage.

However, any other than the limited interpretation of the word as defined in the Penal Code is impossible in the face of the concluding clause of section 4 of the Code of Criminal Procedure, which directs that "all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined (and the word adultery is not one of those hereinbefore defined) shall be deemed to have the meanings respectively attributed to them by that code."

I concur, therefore, in the order proposed by my learned colleague.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1894.
January 18.

PALANIAPPA CHETTI AND ANOTHER (DEPENDANTS), APPELLANTS,

v.

PERIAKARUPPAN CHETTI (PLAINTIF), RESPONDENT.*

Contract—Promissory note or bond executed in Foreign State—Liability determined by lex loci contractus—Suit upon consideration for the document—Lex fori.

Where, according to the *lex loci contractus*, a promissory note or bond cannot, in the absence of registration, be a source of legal right, no action on an unregistered note or bond can be maintained. Whether a suit will lie upon the consideration for the instrument is a question of procedure, to be governed by the *lex fori*, and in British India such a claim must either be stated in the plaint as an independent ground of claim, or treated as such and an issue taken at the first hearing. *Paliappa v. Mohammed Khasim*(1) cited and followed.

* Second Appeal No. 797 of 1893.

(1) I.L.R., 5 Mad., 166.