

REVISIONAL CRIMINAL.

1903
April 18.*Before Mr. Justice Banerji*

BHAGWANIA v. SHEO CHARAN LAL.*

Criminal Procedure Code, section 488—Maintenance—Application for cancellation of order for maintenance.

Where it is sought, under section 488, sub-sections 4 and 5, of the Code of Criminal Procedure, to have an order passed under sub-section (1) of section 488 set aside, such application must be made to the Magistrate who passed the original order or to his successor in office, who, and who only, has jurisdiction in the matter.

THIS was a reference submitted under section 488 of the Code of Criminal Procedure by the Sessions Judge of Cawnpore. It appears that on the 23rd of April 1895 an order was made by the Joint Magistrate of Cawnpore under section 488 of the Code of Criminal Procedure directing one Sheo Charan Lal to make a monthly allowance of five rupees for the maintenance of his wife Musammat Bhagwania. On the 6th of October 1902 Sheo Charan Lal applied to the Cantonment Magistrate of Cawnpore, under sub-sections (4) and (5) of section 488 of the Code, for the cancellation of the order of maintenance, upon the ground that Musammat Bhagwania was living in adultery. The Cantonment Magistrate made an order granting the application and setting aside the order for maintenance. On an application by Musammat Bhagwania for revision of this order the Sessions Judge was of opinion that the Cantonment Magistrate had no jurisdiction to pass the order which he had made cancelling the previous order of the Joint Magistrate, and accordingly referred the case to the High Court.

Babu *Satya Chandra Mukerji*, for the applicant.

BANERJI, J.—On the 23rd of April 1895, an order was made by the Joint Magistrate of Cawnpore, under section 488 of the Code of Criminal Procedure, directing one Sheo Charan Lal to make a monthly allowance of Rs. 5 for the maintenance of his wife, Musammat Bhagwania. On the 6th of October, 1902, Sheo Charan Lal applied to the Cantonment Magistrate of Cawnpore, under sub-sections (4) and (5) of section 488, for the

* Criminal Reference No. 142 of 1903.

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cancelment of the order of maintenance, upon the ground that Musammât Bhagwanîa was living in adultery. The Cantonment Magistrate has made an order granting the application and setting aside the order of maintenance.

I agree with the learned Sessions Judge, who has reported this case under section 433 of the Code of Criminal Procedure, that the Cantonment Magistrate had no jurisdiction to entertain the application and to make an order cancelling the order of maintenance. It is manifest from the provisions of section 488 that the application should have been made to the Magistrate who made the original order, or to his successor in office. (If it had been the intention of the Legislature that an application like the one in question could be made to any Magistrate, we should have expected to find in the Code a provision similar to that contained in the latter portion of section 490, by which any Magistrate in any place where the person against whom the order is made resides, is authorized to enforce the order of maintenance.) In the absence of such a provision, and having regard to the whole context of section 488, I am of opinion that an application like the one made by Sheo Charan Lal could not be made to a Magistrate other than the presiding officer of the Court which made the order of maintenance. I accordingly set aside the order of the Cantonment Magistrate, dated the 22nd of October, 1902, as passed without jurisdiction.

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April 29.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.
GOBIND KRISHNA NARAIN AND ANOTHER (PLAINTIFFS) v. ABDUL
QAYYUM AND OTHERS (DEFENDANTS).*

Hindu law—Joint Hindu family—Effect of conversion of member of joint Hindu family to Muhammadanism—Regulation No. VII of 1832, section 9—Compromise—Title taken under compromise between persons having mutually exclusive claims.

In the year 1845 one Ratan Singh, who at that time formed with his son Daulat Singh a joint Hindu family, possessed as such of considerable

* First Appeal No. 86 of 1900, from a decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 30th of March, 1900.