

## REVISIONAL CRIMINAL.

1904  
January 20.

Before Mr. Justice Aikman.\*

KALLU v. KAUNSILIA.

*Criminal Procedure Code, section 488(1),—Maintenance—“Living in adultery.”*

Held that the fact that a woman who applied for an order for maintenance against her husband had given birth to an illegitimate child some two years before the date of her application, was not a reason for refusing to make an order for maintenance, it being found that since that time she had been living with her parents and leading a chaste and respectable life. *Empress v. Nandan* (1), *Petition of Kashi Sheodiala* (2) and *Empress v. Daulat* (3) referred to.

IN this case one Kallu was ordered by the Joint Magistrate of Cawnpore to make a monthly allowance of Rs. 2 for the maintenance of his wife, Musammat Kaunsilia. The order was passed under the provisions of section 488(1) of the Code of Criminal Procedure. Kallu applied in revision to the Sessions Judge, relying upon certain facts found by the Joint Magistrate as a reason for cancellation of the order. The Magistrate had found that his wife had left Kallu some three years previously and a year after that had given birth to an illegitimate child, but that since then she had not been shown to have continued unchaste. He further found that the wife had been for some time living with her parents and leading a chaste and respectable life. The Joint Magistrate held that Musammat Kaunsilia could not be said to be “living in adultery” within the meaning of section 488, sub-section (4) of the Code. The Sessions Judge, however, took a contrary view of the facts found by the lower Court and reported the case for orders of the High Court under section 438 of the Code, with the recommendation that the Joint Magistrate’s order should be set aside.

Babu *Satya Chandra Mukerji*, for the applicant in revision.

Babu *Moti Lal Nehru* (for whom Pandit *Mohan Lal Nehru*), for the opposite party.

AIKMAN, J.—In this case one Kallu was ordered by the Joint Magistrate of Cawnpore to make a monthly allowance of Rs. 2 for the maintenance of his wife, Musammat Kaunsilia.

\* Criminal Reference No. 810 of 1903.

(1) Weekly Notes, 1881, p. 37. (2) Weekly Notes, 1881, p. 62.  
(3) Weekly Notes, 1881, p. 113.

The order was passed under the provisions of section 488(1) of the Code of Criminal Procedure. The Joint Magistrate found that the applicant, Musammat Kaunsilia, had some two years previous to the date of her application given birth to an illegitimate child. He further found that since that time she had been living with her parents and leading a chaste and respectable life. He held that this one lapse from virtue did not disentitle her to receive maintenance. The learned Sessions Judge has submitted the case to this Court with the recommendation that the order should be set aside. The learned Judge argues that the act of adultery, which the wife is proved to have committed, disentitles her to receive any maintenance. I cannot accept this view. In my judgment the interpretation put by the learned Joint Magistrate on the language of subsection 4 "no wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery" is the right and natural interpretation of the words. It is also the interpretation which, as I have satisfied myself by referring to the records in the cases *Empress v. Nundan* (1), *Petition of Kashi Sheodiala* (2) and *Empress v. Dawlat* (3), has been uniformly placed upon these words by this Court. Let the record be returned.

1904

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 v.  
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## APPELLATE CIVIL.

 1904  
 January 20.
 

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Before Mr. Justice Blair and Mr. Justice Banerji.

HAMID ALI (JUDGMENT-DEBTOR) v. GAYADIN AND ANOTHER

(DECREE-HOLDERS).\*

*Civil Procedure Code, section 584—Second Appeal—Act No. XV of 1877 (Indian Limitation Act), section 5—Discretion of Court—Extension of time for filing appeal.*

Held that no second appeal would lie in a case where the appeal to the Court below was barred by limitation, and that Court in the exercise of its

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\*Second Appeal No. 532 of 1903, from a decree of Pandit Sri Lal, Additional Judge of Aligarh, dated the 4th March, 1903, confirming a decree of Maulvi Muhammad Ahmad Ali, Subordinate Judge of Aligarh, dated the 5th December, 1900.

(1) Weekly Notes, 1881, p. 37. (2) Weekly Notes, 1881, p. 62.  
 (3) Weekly Notes, 1881, p. 118.