

For the reasons given above I set aside the order of the learned Magistrate, dated the 1st of November, 1926, and order that the case be sent to the learned District Magistrate of Muzaffarnagar with a direction that either he should try the case himself or send the case for trial to some Magistrate other than the Magistrate who passed the order, for trial according to law.

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v.  
NANAK.

*Order set aside.*

*Before Mr. Justice Ashworth.*

SHER SINGH v. AMIR KUNWAR.\*

*Criminal Procedure Code, section 488, clause (9)—Jurisdiction  
—“ Resided.”*

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A stay of two months in a temporary place of residence with occasional visits during that period to the permanent place of residence can be regarded as amounting to a “residence” within the meaning of section 488 of the Code of Criminal Procedure.

The expression “resided” in clause (9) of this section includes a temporary residence and is not to be confined to permanent residence.

*Ramdei v. Jhanni Lal* (1) and *Flowers v. Flowers* (2), distinguished.

THIS was a reference by the Sessions Judge of Agra. The facts of the case are fully set forth in the judgement of the High Court.

The parties were not represented.

ASHWORTH, J. :—This case arises out of a reference by the Sessions Judge of Agra under section 435, Code of Criminal Procedure, asking this Court to interfere in exercise of its power under section 439, Code of Criminal Procedure, with an order of a Magistrate of the first class of Agra, dated the 6th of

\* Criminal Reference No. 3 of 1927.

(1) (1926) A.I.R. (Oudh), 268.

(2) (1910) I.L.R., 32 All., 203.

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September, 1926. requiring one Sher Singh (applicant before the Judge) to pay Rs. 75 per mensem as maintenance to Musammat Amir Kunwar (opposite party before the Judge).

The facts are as follows :—The parties are husband and wife. Up to March, 1925, they lived at Bhatgaon, Rohtak, Punjab. In that month they came to Jarauli, in the Agra district, on a visit to the father of Sher Singh's daughter-in-law. They stayed here for a period of two months, during which period Sher Singh occasionally visited his home in Bhatgaon. At the end of these two months Sher Singh deserted his wife and returned to the Punjab.

The Magistrate, on an application by the wife under section 488, Code of Criminal Procedure, has ordered Sher Singh to pay her maintenance. The Sessions Judge is of the opinion that a Magistrate of Agra had no jurisdiction because Sher Singh, at the time of the filing of the application under section 488, neither resided in Agra nor was in Agra, and because he could not be said to have last resided with his wife in Agra. The Sessions Judge relies upon a decision of the Chief Judge of the Oudh Chief Court in *Ramdei v. Jhunni Lal* (1). This decision held that a stay in a place for a week by a person having a fixed place of residence elsewhere does not constitute residence in that place. The decision was based on a Full Bench decision of the Allahabad High Court in *Flowers v. Flowers* (2), where the expression "residence" as used in section 3 of the Indian Divorce Act, 1869, was held not to apply to a flying visit to a place for a temporary purpose made without any intention of remaining.

There can be no question of the correctness of the Allahabad decision on the facts. A flying visit for

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(2) (1910) I.L.R., 32 All., 203.

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the purpose of attending business in connexion with a lodge of freemasons cannot amount to residence. In the Lucknow case also the decision would appear to me to be sound. In that case the husband, who deserted his wife, brought her (his wife) to the house of her brothers in Lucknow in order to leave her there. This could not be called residence of husband and wife. The facts in the present case are different. The husband and wife had been in Agra for two months. During that time the husband had gone back to his permanent residence once or twice but had returned to Agra. There can be no question that a person can have two residences. He may have a permanent place of residence and a temporary place of residence. The point at which a visit or a stay becomes capable of being held to be residence is one that is difficult to define. In the present case I consider that a stay for two months in a temporary place, with occasional visits in that period to the permanent place of residence, should be regarded as amounting to temporary residence sufficient within the meaning of section 488. The expression "resided" in clause (9) of that section, in my opinion, will include a temporary residence and is not to be confined to permanent residence.

With these remarks the case may be returned to the Sessions Judge and the application of Sher Singh in revision will stand dismissed.

*Application dismissed.*