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SRIMATI
CHAMELI

In our judgment the court below was fully justified in the circumstances of this case to have separated the liabilities of the two defendants. We see no reason to interfere with the decree of the court below. The cross-objection is accordingly dismissed with costs.

FULL BENCH

Before Sir John Thom, Chief Justice, Mr. Justice Allsop, Mr. Justice Bajpai, Mr. Justice Ganga Nath and Mr. Justice Ismail

EMPEROR v. BENI*

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May, 9

Criminal Procedure Code, section 488(3)—Imprisonment for default in paying maintenance ordered by Magistrate—Extent of sentence on one warrant.

Section 488(3) of the Criminal Procedure Code empowers the Magistrate, on the issue of one warrant, to sentence the person who has defaulted in the payment of maintenance, ordered under the section, to imprisonment for one month in respect of each month or part of a month for which there has been default, and the section does not enjoin that there should be a separate warrant in respect of each term of imprisonment for one month. Where arrears have been allowed to accumulate, the court can issue one warrant and impose a cumulative sentence of imprisonment for as many months as the number of months in respect of which default has been made.

Mr. Ishaq Ahmad, for the applicant.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

THOM, C.J., ALLSOP, BAJPAI, GANGA NATH and ISMAIL, JJ.:—This is a criminal reference by the learned Sessions Judge of Cawnpore. It raises one short question of law, namely whether a person who has defaulted in payment of maintenance ordered under section 488 of the Criminal Procedure Code can be sentenced to imprisonment for a period of more than one month where only one warrant under sub-section (3) of the aforementioned section has been issued.

*Criminal Reference No. 736 of 1937.

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An order was passed against the applicant Beni on the 7th of August, 1934, directing him to pay maintenance at the rate of Rs.7 per month to his wife Mst. Sitalia. This order was modified on the 21st of June, 1937, when the amount was reduced from Rs.7 per month to Rs.5 a month. The applicant failed to comply with the order of the court and, accordingly, on the 1st of July, 1937, he was sentenced to six months' rigorous imprisonment under section 488(3) of the Criminal Procedure Code. On that date he was in arrears in respect of payment of maintenance for about 24 months.

In revision the learned Sessions Judge of Cawnpore held that in respect that only one warrant had been issued the applicant could not be sentenced to more than one month's rigorous imprisonment. He accordingly referred the matter to this Court for orders.

On the 15th of November, 1937, the matter came before a learned single Judge of this Court. who, in view of the decision of a Full Bench of this Court in *Queen-Empress v. Narain* (1) which he considered to be unsound, referred it for consideration by a larger Bench.

We are satisfied that the decision in *Queen-Empress v. Narain* cannot be regarded as sound law. In his judgment in that case EDGE, C.J., observed:—"I am of opinion that the principle enunciated in the ruling reported in the Madras High Court Reports, vol. 6, p. XXIII (Appendix) is applicable to a case arising under section 488 of the present Criminal Procedure Code." The order which was being considered by the learned CHIEF JUSTICE was one under the Criminal Procedure Code of 1882. The attention of the Court, however, does not appear to have been drawn to the fact that the order in the Madras case was one under the Criminal Procedure Code of 1861.

The question was considered in the case of *Allapichai Ravuthar v. Mohidin Bibi* (2). In that case a Bench of the Madras High Court held that the maximum imprisonment under section 488 of the Criminal Procedure Code of 1882 where one warrant only was

(1) (1887) I.L.R. 9 All. 240.

(2) (1896) I.L.R. 20 Mad. 3.

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issued was one month for each month's arrears and if there was a balance for a portion of a month a further term of a month's imprisonment might be imposed for such arrears. The Bench did not agree with the interpretation of the section by the Full Bench in the case of *Queen-Empress v. Narain* (1). Their Lordships pointed to the difference in the wording between section 488 of the Criminal Procedure Code of 1882 and section 316 of the Criminal Procedure Code of 1861 under which the order was passed in the case reported in Madras High Court Reports, vol. 6, p. XXIII (Appendix) upon which EDGE, C.J., relied.

Section 316 of the Code of 1861 runs as follows:—
 "The Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in the manner provided for levying fines, or may order such person to be imprisoned with or without hard labour for any term not exceeding one month."

Section 488(3) of the Code of 1882 enjoins: ". . . Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month . . ."

As is pointed out in the judgment of the Bench in *Allapichai Ravuthar v. Mohidin Bibi* (2) the change in the wording is significant. The introduction of the words, "for the whole or any part of each month's allowance", is vital. If it be held that Magistrates can impose a term of imprisonment for only one month under section 488 these words which the legislature added in the Act of 1882 would be unmeaning.

Section 488 of the present Criminal Procedure Code of 1898 is in the same terms as section 488 of the Criminal Procedure Code of 1882.

We are satisfied after a consideration of the terms of the section that the intention of the legislature was to

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(2) (1896) I.L.R. 20 Mad. 3.

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empower the Magistrate after execution of one warrant only to sentence a person who has defaulted in the payment of maintenance ordered under section 488 of the Criminal Procedure Code to imprisonment for a period of one month in respect of each month's default and that the section does not enjoin that there should be a separate warrant in respect of each term of imprisonment for one month. In other words, where arrears have been allowed to accumulate the court can issue one warrant and impose a cumulative sentence of imprisonment.

We would observe that the decision in *Allapichai Ravuthar v. Mohidin Bibi* (1) has been followed in a number of other cases, e.g., in *Bhiku Khan v. Zahuran* (2), *Emperor v. Sardar Muhammad* (3) and *Emperor v. Budhu Ram* (4).

We would remark further that the warrant of imprisonment under section 488 of the Criminal Procedure Code—the form of which is to be found in schedule V, No. XL—contemplates a sentence of more than one month's rigorous imprisonment in the case of a person who has defaulted in payment for more than one month. The warrant runs:—“. . . and whereas it has been further proved that the said (name) in wilful disregard of the said order has failed to pay rupees . . ., being the amount of the allowance for the month (or months) of . . . : And thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment in the said jail for the period of . . .”

We therefore hold that in the case of a default in payment directed by an order under section 488 of the Criminal Procedure Code the Magistrate seised with the case may issue one warrant and thereafter pass a sentence of imprisonment of one month in respect of each month or part of a month for which there has been default in payment.

In the result we reject the reference and direct that the record be returned.

(1) (1896) I.L.R. 20 Mad. 3.
(3) A.I.R. 1935 Lah. 758.

(2) (1897) I.L.R. 25 Cal. 291.
(4) (1918) 50 Indian Cases, 847.