

REVISIONAL CRIMINAL

Before Mr. Justice Ganga Nath

PEAREY LAL *v.* NARAINI*

1935
August, 30

Criminal Procedure Code, section 488—Maintenance order—Duration of order—Wife's returning to live with husband does not automatically cancel order—Order enforceable after the wife is again turned out.

A maintenance order passed under section 488 of the Criminal Procedure Code in favour of the wife remains in force until it has been cancelled or modified by the court under section 488(5) or section 489, and the mere fact that after the order the wife went and lived with her husband for some time, until she was turned out by him again, would not automatically cancel or terminate the operation of the order, though it would suspend the operation for the period during which she lived with her husband. The same order can therefore be enforced by her after such period.

The general principle of law that an order, of which the term is not fixed and of which the currency is not made expressly dependent upon the continued existence of some circumstance or set of circumstances, remains in force until it is cancelled is applicable to maintenance orders passed under section 488 of the Criminal Procedure Code.

Mr. *E. V. David*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

GANGA NATH, J.:—This is an application in revision by Pearey Lal against an order of Mr. Abdul Waheed Khan Khalil, Magistrate, first class, Meerut, under section 488 of the Criminal Procedure Code. This order was confirmed by the learned Sessions Judge of Meerut in revision. The opposite party Mst. Naraini, wife of the applicant, obtained an order under section 488 of the Criminal Procedure Code for maintenance on 11th March, 1932, against the applicant. The applicant made an application stating that he was willing to take his wife back, but it was rejected. Mst. Naraini lived

*Criminal Revision No. 595 of 1935, from an order of R. L. Yorke, Sessions Judge of Meerut, dated the 15th of July, 1935.

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for some time thereafter with her husband and when she was turned out again by her husband she went to live with her sister. In 1935 she made an application to recover the maintenance (Rs.4 a month) which had been allowed to her under the order of 11th March, 1932. The applicant contested this application on the mere ground that Mst. Naraini had been living in adultery and therefore was not entitled to any maintenance. Both the parties produced evidence on this point and it was found by the learned Magistrate that the applicant's objection was false and that Mst. Naraini had not been living in adultery and was entitled to maintenance, and he passed an order for the payment of the arrears due. Against this order a revision was filed, which was rejected by the learned Sessions Judge, Meerut, as stated above.

The only point that is pressed by the learned counsel for the applicant here is that the order of 11th March, 1932, became ineffectual and unenforceable on account of Mst. Naraini having gone to and lived with her husband after the order. The learned counsel for the applicant relies on *Phul Kali v. Harnam* (1). There a reference was made by the learned Sessions Judge as follows: "I think the woman should have instituted formal proceedings under chapter XXXVI of the Criminal Procedure Code, that the Joint Magistrate should have heard what the husband had to say as to his willingness to keep the woman with him, and should have considered any evidence produced by either party, and then should have decided whether the wife was entitled to receive any allowance from her husband. I think the Joint Magistrate was wrong in simply directing payment of arrears under the order of June, 1881. I recommend that his order be set aside." On this, STRAIGHT, J., ordered: "I entirely agree with the learned Judge in the view which he takes of the Joint Magistrate's order, and concur in all that he has said upon

(1) Weekly Notes, 1888, p. 217.

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the subject. The Joint Magistrate's order must be and is quashed." It appears that all that was done in that case was that the Joint Magistrate's order, which had been passed without giving any opportunity to the husband to show cause as to why he should not pay arrears, was set aside. In this case, a notice was issued to the husband and he was given full opportunity to show cause as to why he should not pay the maintenance which had been ordered against him. There is nothing in the order of STRAIGHT, J., referred to above, to show if the order of maintenance was held to have become inoperative, if so on what grounds. The mere fact that a woman goes to live with her husband for some time is not sufficient to make the order ineffectual, though it may have the effect of suspending the order for the period the woman lives with her husband.

The general principle of law that an order, whose term is not fixed and whose currency is not made expressly dependent upon the continued existence of some circumstance or set of circumstances, remains in force until it is cancelled, is *prima facie* applicable to maintenance orders passed under section 488 of the Criminal Procedure Code. The husband may, on proof of circumstances specified in section 488(5) or section 489 of the Criminal Procedure Code, obtain the cancellation or modification of the original order, as the case may be, and until he does that, the original order must be deemed to be still in force. The mere fact that a wife has returned to live with her husband will not bring the order to an end automatically, and on her separating from him again, she can enforce it. Section 488(5) of the Criminal Procedure Code provides for the cancellation of the order. The reasons given therein for cancellation are not exhaustive. Section 489 of the Criminal Procedure Code provides for variation of the order as well as for its cancellation in consequence of any decision of a competent civil court.

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Section 490 of the Criminal Procedure Code which relates to the enforcement of the order lays down: "A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due." The only conditions laid down in respect of the enforcement of the order under section 490 of the Criminal Procedure Code are the identity of the parties and the non-payment of the allowance due. If any such thing occurs as may be fit to vacate the order, the proper procedure for the husband is to apply to the court and get the order cancelled. So long as the order stands it is capable of being enforced, though in the case of the woman living with her husband it would remain suspended for the period during which she lives with her husband. This view is supported by *Kanagammal v. Pandara Nadar* (1) and *Parul Bala Debi v. Satish Chandra* (2).

There is no force in the application. It is therefore ordered that it be rejected. The stay order is discharged.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice
and Mr. Justice Bennet*

NATH SAH (DEFENDANT) *v.* DURGA SAH (PLAINTIFF)*

1935
September, 2

Negotiable Instruments Act (XXVI of 1881), section 80—Promissory note—Interest not mentioned—Right to interest—Date from which interest is to be allowed—Contract Act (IX of 1872), section 25(3)—Promise to pay time barred debt—Whether the promise must specifically mention the time

*Second Appeal No. 623 of 1932, from a decree of Shamsul Hasan, District Judge of Kumaun, dated the 7th of December, 1931, confirming a decree of L. H. Niblett, Subordinate Judge of Naini Tal, dated the 14th of March, 1931.

(1) (1926) I.L.R., 50 Mad., 663.

(2) (1923) 75 Indian Cases, 529.