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## CRIMINAL REVISIONAL.

Before Mr. Justice Mahmood.

LARAITI v. RAM DIAL.

*Act X of 1872 (Criminal Procedure Code), s. 536—Maintenance of wife—Adultery of wife subsequent to order for maintenance—Res judicata.*

A husband upon whom an order to make an allowance for the maintenance of his wife had been made, under s. 536 of Act X. of 1872, objected to the payment of the allowance on the ground that his wife was living in adultery. The Magistrate entertaining this objection disallowed it, on the ground that the charge of adultery against the wife was not established. The husband subsequently again objected to the payment of the allowance on the same ground. The Magistrate entertaining the second objection allowed it, and directed the husband to discontinue paying the allowance. His order was based on proof of adultery by the wife before the date of the order of the former Magistrate. *Held*, on the general principles of the rule of *res judicata*, that the second Magistrate was wrong in law in re-opening matters already adjudicated upon, and his order directing the discontinuance of the allowance on the ground of facts antecedent to the former Magistrate's order must be held to be illegal.

THIS was a case reported for orders under s. 296 of Act X. of 1872 (Criminal Procedure Code) by Mr. J. L. Denniston, Officiating Sessions Judge of Farukhabad. The facts of the case are stated in the judgment of the High Court.

MAHMOOD, J.—The facts of the case are briefly these :—On the 9th November, 1877, Laraiti obtained an order for maintenance against her husband Ram Dial. Subsequently the husband objected to pay the allowance on the ground that his wife was living in adultery. Thereupon an inquiry was held by the District Magistrate into the matter, and on the 2nd March, 1880, Ram Dial's objection was disallowed on the ground that the charge of adultery against Laraiti was not established, and he was directed to continue to pay maintenance under the terms of the order of the 9th November, 1877. In the present year Ram Dial appears to have again objected to the payment of maintenance on the same ground; and the Deputy Magistrate, after holding an inquiry, held that the allegation of adultery made against Laraiti was established, and by an order dated the 4th August, 1882, directed the discontinuance of the maintenance. Thereupon Laraiti applied to the Sessions Judge for interference, under s. 296, Criminal Procedure Code, and the learned Sessions Judge has made this refer-

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ence under that section, on the ground that the witnesses on whose evidence the Deputy Magistrate has relied stated facts relating to a period antecedent to the 2nd March, 1880, and that those facts must therefore be taken to have been adjudicated upon by the District Magistrate in his order of the 2nd March, 1880, whereby he disallowed Ram Dial's objections. It seems that the District Magistrate's order above referred to was never brought to the notice of the Deputy Magistrate, and his proceedings were therefore held in ignorance of the existence of that order.

Some doubt seems to have been raised in this case before the learned Sessions Judge, as to whether the order of the Deputy Magistrate was illegal, for the particular reason that there is no provision in the present *Criminal Procedure Code* (Act X. of 1872) empowering the Magistrate to cancel an order of maintenance (passed under s. 536) on the ground of the wife's subsequent adultery.

Reference also seems to have been made to the provisions of s. 537 as conferring the requisite power, but I have no hesitation in holding that that section has no application to the case. And I agree with the learned Sessions Judge in the view that the Legislature in employing the words "no wife shall be entitled to receive an allowance from her husband.....if she is living in adultery," used in the last part of s. 536, relate not only to the original order for maintenance, but also to the continuance of the receipt of an allowance subsequent to the original order. The section therefore implies the necessity and legality of an inquiry such as the one held by the Deputy Magistrate, and on this ground his proceedings were not open to the objection of illegality. Such was the view taken by the High Court of Bombay in the case of *Chaku* (1) and has since been explicitly adopted by the Legislature in the penultimate paragraph of the corresponding s. 488 of the new *Criminal Procedure Code* (Act X. of 1882) which will come into force in a few weeks.

In dealing with the main question raised by this reference, I am of opinion that the order of the District Magistrate, dated the 2nd March, 1880, must be taken to have adjudicated upon all the facts

(1) 3 Bom. H. C. R., Cr. Cas., 124.

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antecedent thereto and connected with the objection of Ram Dial as to his wife's leading an adulterous life. Upon the general principles of the rule of *res judicata*, I am of opinion that the Deputy Magistrate was wrong in law in re-opening matters already adjudicated upon, and his order directing the discontinuance of maintenance on the ground of facts antecedent to the District Magistrate's order must be held to be illegal.

I therefore set aside the order of the Deputy Magistrate dated the 4th August, 1882, and direct that he should hold an inquiry *de novo* in regard to the adulterous conduct of Laraiti, alleged by her husband Ram Dial, with reference to the period subsequent to the District Magistrate's order of the 2nd March, 1880.

In conclusion, I wish to observe that the record shows that the notes of evidence recorded by the Deputy Magistrate are very inadequate and vague, and the order recorded by him proceeds upon no distinct findings of facts, but upon a vague finding that "Laraiti is a bad character." The proceedings under Chapter XLI. of the Criminal Procedure Code are judicial proceedings in their nature and must not be conducted as if they were merely ministerial matters.

Before Mr. Justice Mahmood.

IN THE MATTER OF THE PETITION OF DIN MUHAMMAD.

Maintenance of wife—Act X of 1872 (Criminal Procedure Code), s. 536—Muhammadan Law—Divorce—"Iddat."

An order for the maintenance of a wife, passed under Chapter XLI of Act X of 1872, becomes inoperative, in the case of a Muhammadan, by reason of his lawfully divorcing his wife, and thus putting an end to the conjugal relation, but it does not become so before the expiration of the divorced wife's "iddat."

*Abdur Rohoman v. Sakhina* (1); *In re Kasam Pirbhui* (2); and *Luddun Sahiba v. Mirza Kamar Kudar* (3); Madras High Court Proceedings, 2nd December 1879; referred to and followed.

The Muhammadan law of divorce relating to the maintenance of a divorced wife during her "iddat" referred to.

THIS was a reference under s. 296 of Act X. of 1872 (Criminal Procedure Code) by Mr. T. Benson, Officiating Magistrate of the Allahabad District, of a case under s. 536 of that Act decided

(1) I. L. R., 5 Calc., 558. (2) 8 Bom. H. C. R., Cr. Cas. 95.  
(3) I. L. R., 8 Calc., 736.

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