CRIMINAL JURISDICTION.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1884
August 21.

In re THE PETITION OF SHAIK FAKRUDIN.*

Jurisdiction—Criminal Procedure Code (Act X of 1882), Sec. 488—"The District Magistrate", meaning of the expression—Complaint by a wife against her husband for maintenance.

A complaint under section 488 of the Criminal Procedure Code (Act X of 1882), falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint.

The expression "The District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate and a Magistrate of the first class" in section 488 means the Magistrate of the particular district in which the person resides, against whom such a complaint is made.

THE petitioner's wife Husenbi lodged a complaint against him for maintenance, before the First Class Magistrate at Karmála in the Sholápur District. A summons was served upon the petitioner to answer the complaint at Karmála. On receipt of the summons the petitioner made an application on 8th July, 1884, to the High Court praying that the complaint might be ordered to be transferred to the Court of the Presidency Magistrate at Bombay.

In his affidavit the petitioner among other things stated that he married his wife the complainant in 1881 and lived with her happily till May 1882; that his wife was taken away by her father with the consent of the petitioner to Karmála, the father promising at the same time to send her back after two months; that after the lapse of two months he wrote twice to her father to send her back, but the latter refused to do so and wrote in reply that the petitioner should never have her back and that he might take another wife if he chose; that he took another wife in December, 1882; that on 14th May, 1884, he received a letter from the father of his wife calling upon him if he wished his wife to return, to give security for her proper treatment and to pay all expenses incurred for her maintenance during the time she had been with her father; and that with a view to annoy him a

*Criminal Application, 100 of 1884.

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complaint was lodged against him by his wife at the instigation of her father. He stated that if proceedings were allowed to go on at Karmála the petitioner would be deprived of the evidence of his witnesses who resided at Bombay; that for about ten years he had been residing at Bombay; he submitted that the Court at Karmála had no jurisdiction to try the complaint and that the case should be ordered to be transferred to the Presidency Magistrate's Court at Bombay.

An order was made on 10th July, 1884, calling upon the complainant to show cause why the complaint should not be transferred to Bombay.

Mánekshán Jehángirshán showed cause.

Hon. *V. N. Mandlik* for the Crown.—The Magistrate at Karmála, being a Magistrate of the first class, has jurisdiction to try the case. The case should be tried at Karmála, the place where the complainant resides, and not where the husband resides —*In the matter of the Petition of W. B. Todd*(1).

Shámráv Mánik Rele for the petitioner.—The Magistrate at Karmála has no jurisdiction to entertain the complaint. The complaint ought to have been lodged at Bombay where the petitioner has been residing. Neglect to maintain a wife or child is an offence under the Code, and under section 177 it is triable where such offence is committed. The breach of duty on the part of the husband has taken place in Bombay.

It would be a hardship on the husband or the father to be compelled to go wherever the wife might choose to lay her complaint against him.

WEST, J.—This is an application for transfer from the First Class Magistrate's Court at Karmála in the Sholápur-Bijápur District to the Court of one of the Presidency Magistrates of a complaint lodged by the wife of the petitioner against him for maintenance under section 488 of the Code of Criminal Procedure.

From the affidavit filed by the petitioner it appears that he is a resident of Bombay, having lived here for upwards of ten

(1) 5 N. W. Pro. Rep., 237.

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years with his wife the opponent. He allowed her to go to her parents at Karmála in 1882 and she has not since returned to Bombay.

A rule *nisi* was granted by this Court calling upon the opponent (the wife) to show cause why the proceedings in the matter before the First Class Magistrate at Karmála should not be quashed as having been held without jurisdiction, or, if jurisdiction were found to exist, why the inquiry should not be transferred to the Presidency Magistrate's Court at Bombay. The rule has been argued at great length by the pleaders of the parties and the Government Pleader to whom a notice was given.

The principal question we have to consider is whether the First Class Magistrate of Karmála has jurisdiction to take cognizance of the complaint made to him by Husenbi against her husband Shaik Fakrudin, a resident in the city of Bombay.

In England the obligation of parents or children to support their children or parents has been statutably recognized from the time of Queen Elizabeth. The Statute 43 Eliz., cap. 2, sec. 7, enacts that "the father and grandfather and the children of every poor, old, blind, lame and impotent person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter sessions shall be assessed; upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein." It thus appears that the father and grandfather, &c., were required by that statute to relieve and maintain such relations as could not help themselves. On failure the duty was to be enforced by the justices having local jurisdiction over the person bound.

Several statutes were subsequently passed dealing with the same subject. The Statute 59, Geo. III, cl. 12, sec. 26 empowered the justices of the peace in petty sessions to order the same relief by parents, &c., to poor relations or persons as was authorized to be given by the justices in their general quarter sessions under the Statute of Elizabeth. The jurisdiction of the justices in petty

sessions was confined within a certain local area analogous to district here.

Then came the Statutes 4 and 5 Will. IV., c. 76, sec. 78 of which provided that the sums payable under the Statute of Elizabeth by relations of poor persons should be recoverable against every person assessed or charged with them by the justices of the peace in like manner as penalties and forfeitures were recoverable under the provisions of the Statute of William.

In the case of *Rex* v. *Reeve*(1) it was held that the order for relief must be made by the justices of the county where the person liable to maintain his relation or poor person dwelt, and that if a child to be supported lived in the county of Middlesex and was maintained by the parish there and the person bound to support him lived in the county of Suffolk, the justices of the latter county only could make the requisite order.

The Statute 7, Jac. I., c. 4, sec. 8 while providing a remedy against wilful desertion of children by their parents able to labour and thereby to support their families gave power to the justices of the county in which they had their residence to treat the neglecting persons as incorrigible rogues or vagabonds and deal with them as such under the statute.

Provisions were made by Gilbert's Act (Statute 22, Geo. III, c. 83, sec. 31) for the prosecution of idle persons neglecting to provide for their families; but the power to prosecute them was given to the guardians of the poor of the several parishes, townships and places where the delinquents or neglectors resided, and the justices competent to try them were the justices having local jurisdiction over such places.

Provisions were made on similar subjects by Statute 5, IV, c. 83.

With reference to the argument that the local jurisdiction is determined by the residence of the wife at a place to which she went with her husband's assent it may be pointed out that in a case (*Rex.* v. *Flintan*(2)) turning upon the interpretation of that statute, Bayley, J., observed: "This case is very clear. By this

(1) 2 Bulst., 344. (2) 1 B. & Ad. 227.

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statute a man is criminally responsible for refusing to maintain any of his family to whom he is legally bound to maintain. That obligation must be made out; and it is not established in the case of a wife who has left her husband and lived in adultery."

Lord Campbell in giving judgment in a case (*Flanagan* v. *Overseers of Bishopswearmouth*[1]) stated under Statute 20 and 21 Vic., c. 43, remarked as follows :—"The question now before us is whether upon the facts as stated the husband who has promised to make an allowance to his wife and has broken that promise, and at the same time asked her to come and live with him which she refuses, is guilty of the offence of wilfully refusing to maintain her, I am of opinion that he has not committed any offence."

With the enactments confining the jurisdiction of the justices within a certain local area so far as the persons against whom they were authorized to pass orders for maintenance may be compared the Poor Law Amendment Act (7 and 8 Vic., c. 101) which gives power to the mother of a bastard to apply for a summons to the putative father of a child for his having neglected or refused to maintain the child. That power she can exercise in the county in which she resides without regard to the jurisdiction in which he may be living. The case of the *Queen* v. *Thomson*[2] is instructive on that point. But it is to be remarked that the statutable power was given to the mother as a special case, for special reasons, while jurisdiction of the justices in other similar matters is purely local with reference to the places of residence of persons against whom any coercive order is sought.

The state of the law in England referred to in the foregoing observations must have been familiar to the Indian Legislature when the Code of Criminal Procedure was passed. Turning to section 12 of the Code we find the local jurisdiction of the Subordinate Magistrates including the First Class Magistrates is viewed as of a less extensive character than that of the District Magistrate, whose local jurisdiction again does not extend beyond the area called a "district"; and unless there is any express

(1) 27 L. J. M. C. 46. Comp. *Thomas* v. *Aslop*, L. R. 5 Q. B., 151.
(2) L. R. 12 Q. B. *D.*, p. 263.

enactment to the contrary it appears sufficiently clear that the Legislature did not contemplate an exercise of jurisdiction by any Magistrate outside the limits of an area called a district in which he might be appointed by the Local Government. Referring next to the chapter treating of jurisdiction of Criminal Courts in general, we find a fundamental principle laid down in section 177 to the effect that the competency of a forum to take cognizance of an enquiry into and trial of an offence as defined by section 4 of the Code is determined by the place in which the offence may have been committed.

It is urged that the husband's breach of duty, and that even his disobedience of an order made by a competent Magistrate for payment of maintenance to his wife does not constitute an offence. But it is an offence under the statutes I have referred to, to disobey an order made by the justices for payment of maintenance thereunder.

It is the duty of a woman to reside with her husband, and it is her correlative right to be maintained by him under his roof. "Offence" as defined by the Code is an act or omission made punishable by any law for the time being in force, and hence the breach of the husband's duty declared by the Magistrate's order, or a disobedience of such order, may be said to be an offence because it is attended with a penalty. The first process therefore calling upon the husband to pay maintenance to his wife must be sought in the district in which the obligation, the breach of which followed by a competent Magistrate's order results in an offence, is by law to be fulfilled *i.e.*, the district in which the husband resides.

Even the language of the section 488 under which the Karmála Magistrate appears to have assumed jurisdiction when closely examined supports this view. The expression "the District Magistrate" cannot mean any other District Magistrate than the Magistrate of the particular district in which the person against whom a complaint is made resides. That being the sense of that expression it must be carried on further in the case of other expressions "a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the First Class.'

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The circumstances which it may be necessary for the husband to prove in answer to the complaint of his wife are better known in the place of his residence than in that of her residence, and the serious inconvenience of going with his evidence to a place hundreds of miles away from the place of his residence is a strong reason why the jurisdiction to take cognizance of such a complaint should be confined to Magistrates having local jurisdiction at the place where the husband may reside.

The above considerations lead us to the conclusion that the jurisdiction in the cases of maintenance is to be exercised only in the district in which the person on whom any final order that may be passed in the proceedings is to operate has his residence at the time of making the complaint. Any other construction of the enactment would defeat the intention of the Legislature.

The Allahabad case (*In the matter of the petition of W. B Todd*[1]) cited by the Government Pleader was under section 536 of Act X of 1872. It does not appear from the report that all the above considerations were urged before, or were present to the mind, of the learned Judge who decided the case. The main ground of the decision appears to be that the matter of the complaint before him was not an offence. We are not, however, inclined to go with the learned Judge. The consequences of maintaining the view taken in that case would be disastrous. Any fractious woman might thus make her husband's life miserable by wilfully going from place to place, and dragging him after her by repeated complaints, all perhaps equally unreasonable.

If in this case the complainant left her husband's house and has gone to her parents' with his permission or assent, she does not by that remove the proper cognizance of her complaint from the jurisdiction in which her husband is living. Even if he has consented to support her at a certain place not within the district in which he is dwelling he is not bound to do so for ever: he may recall her and it is then her duty to return. In such cases reason points to the jurisdiction as existing not elsewhere but at

(1) 5 N. W. P. Rep. 237.

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the place of the husband's residence, and consideration of the several sections of the Code leads us to the same conclusion.

On the whole looking to the general convenience and the policy of the Legislature we hold that a complaint under section 488 of the Code can only be lodged in the district in which the husband or the father has his residence.

We quash the proceedings of the Magistrate at Karmála leaving it to the complainant if so advised to make her complaint to the Court of a Presidency Magistrate at Bombay.

Proceedings quashed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Kemball and Mr. Justice West.

In re RAMKRISHNA.*

September 11

Practice—Stamp—Court sale—Certificate of sale—Purchase money.

Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase money in ascertaining the amount of the stamp duty leviable on the certificate of sale.

Other claims should neither be entered in the certificate of sale nor computed as part of the purchase money.

It is the duty of the purchaser to provide the stamp.

THIS was a reference under section 49 of the Indian Stamp Act, No. I of 1879, by Ráo Sáheb V. V. Wagle, Subordinate Judge of Kumta, who stated the case thus :—

"Accompaniment A. is an application for a sale certificate, presented by one Rámkrishna, who purchased certain property for Rs. 2,100 at a sale in execution of a decree.

"The following charges on the property were mentioned in column 3 of the list of claims appended to the Proclamation of Sale :—

"1. A mortgage securing repayment with interest of Rs. 4,633-5-4.

* Civil Reference No. 22 of 1884.