

REVISIONAL CRIMINAL.

Before Young C. J. and Blacker J.

HARNAM SINGH—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 1139 of 1938.

Indian Penal Code (Act XLV of 1860), S. 498 — “ detains ” — meaning of.

Held, that the word “ detains ” in s. 498 of the Indian Penal Code, implies some act on the part of the accused by which the woman’s movements are restricted and that this again implies unwillingness on her part.

That “ detention ” cannot include persuasion by means of blandishment or similar inducements, which would leave the woman free to go if she wished.

That the word “ detains ” cannot be reasonably construed as having reference to the husband.

Emperor v. Mahiji Fula (1), relied upon.

Revision from the order of Sardar Bahadur Bawa Nanak Singh, District Magistrate, Sheikhpura, dated 2nd August, 1938, affirming that of Thakur Kanti Chand, Magistrate, 2nd Class, Sheikhpura, dated 29th April, 1938, convicting the petitioner.

R. C. SONI, for Petitioner.

ADVOCATE-GENERAL, for Crown,

ROOP CHAND, for Complainant,

} Respondent.

The order of Din Mohammad J., dated 13th October, 1938, referring the case to a Division Bench was as follows :—

The petitioner Harnam Singh was convicted of an offence under section 498, Indian Penal Code, on

the complaint of one Joga Singh *alias* Bhagat Singh and sentenced to six months' rigorous imprisonment and Rs. 150 fine. On appeal, the District Magistrate relying solely on the evidence of detention confirmed this sentence. Thereupon Harnam Singh submitted a petition to this Court which was heard by Ram Lall J. The learned Judge admitted it on the question of sentence only and at the same time released the petitioner on bail. By then the petitioner had been in jail for not more than 24 or 25 days.

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Counsel for the petitioner contends that the word "detains" as used in section 498, Indian Penal Code, implies some act on the part of the accused by which the woman's movements are restrained and inasmuch as it has not been established in the present case that the complainant's wife, even if she were living with the petitioner, had been kept back against her wishes, no offence in law is proved against him. Counsel for the Crown urges that as the petition was admitted on the question of sentence only this point cannot now be raised. I, however, do not agree. If it is found that no offence was committed by the petitioner in the eye of the law, he will be entitled to claim his release forthwith; otherwise his petition may be liable to dismissal as the sentence that he has already served may not be considered adequate.

On behalf of the petitioner reliance has been placed on *Lachman Chamar v. Emperor* (1), *Ochachal Ahir v. Emperor* (2), *Abdul Wahid Khan v. Emperor* (3), *Emperor v. Mahiji Fula* (4), *Prithi Misser v. Harak Nath Singh* (5) and *Ramanarayan Baburao Kapur v. Emperor* (6).

(1) (1920) 18 All. L. J. 311.

(2) (1928) 26 All. L. J. 403.

(3) (1927) 28 Cr. L. J. 703.

(4) I. L. R. (1934) 58 Bom. 88.

(5) 1936 A. I. R. (Cal.) 450.

(6) I. L. R. [1937] Bom. 244.

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In *Lachman Chamar v. Emperor* (1), Piggott J. held that no offence was committed by a person with whom a married woman was found to be living with her own free will and without any desire to return to her husband. In *Ochachal Ahir v. Emperor* (2), Walsh J. followed *Lachman Chamar v. Emperor* (1). In *Abdul Wahid Khan v. Emperor* (3), Pullan J. observed that if a married woman had willingly gone to live with the accused, it could not be said that she had been detained within the meaning of section 498, Indian Penal Code. In that case, however, the husband had been inactive for 15 years.

In *Prithi Misser v. Harak Nath Singh* (4), Cuncliffe and Henderson JJ. held that the word "detains" in section 498 was *ejusdem generis* with enticement and concealment and in order to find the accused guilty of "detaining" there must be evidence to show that the accused did something which had the effect of preventing the woman from returning to her husband.

To the same effect are the two Bombay cases. In *Emperor v. Mahiji Fula* (5), the woman was found to have been staying with the accused without any sort of compulsion or restraint. The husband went to the house of the accused but was threatened and the husband then left the woman where she was. The accused on a complaint by the husband was convicted of the offence of detaining the woman. He was, however, acquitted by the Sessions Judge. Thereupon the Government of Bombay preferred an appeal under section 417, Criminal Procedure Code, which was heard by Broomfield and Divatia JJ. Broomfield J.

(1) (1920) 18 All. L. J. 311.

(3) (1927) 28 Cr. L. J. 703.

(2) (1928) 26 All. L. J. 403.

(4) 1936 A. I. R. (Cal.) 450.

(5) I. L. R. (1934) 58 Bom. 88.

who wrote the principal judgment went thoroughly into the matter, discussed the authorities relied on by either side and came to the conclusion that if it was once found that the woman was being neither restrained nor confined within the legal signification of the term, no offence under section 498 was committed. Divatia J. who wrote a concurring judgment made the position still clearer when he remarked :—

“ At one time I had some doubt as to whether, in view of these facts, it cannot be said that the word “ detains ” in the section has reference to detention as against the husband, irrespective of the wishes of the wife, and that therefore the person who keeps the married woman in his house may be guilty under the section as against the husband, even though the woman has no physical or any other restraint placed against her. But on a further consideration of the section I think the right view to take would be that the word “ detains ” should be interpreted in its natural and ordinary sense, and this can be clear if we see the scheme of the section.”

In *Ramanarayan Baburao Kapur v. Emperor* (1), Broomfield J. was again the senior member of the Bench and he observed :—

“ But considering the whole history of the affair as it appears in evidence, I cannot see any reason to doubt that the two were in love with one another and the elopement was a joint adventure in which the motive force was mutual affection and not any enticement by the accused. * * * But the question here is whether there really was anything that amounts to detention. The meaning of the word ‘ detains ’

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in section 498 has been recently discussed in *Emperor v. Mahiji Fula* (1). It was pointed out there that the word has its ordinary meaning of 'keeping back.' * * * It seems to me in this case that it cannot be said in any sense that R. was kept back by the accused either from her husband or from the complainant. She has no more use for her husband than he has for her and she was evidently most unhappy at home."

As against these authorities counsel for the Crown has relied on *Ganesh Prasad v. Tulsi Ram* (2), *Abdul Kayum v. Emperor* (3) and *Mohammad Aslam Khan v. Emperor* (4).

In *Ganesh Prasad v. Tulsi Ram* (2), Smith J. commented on the Allahabad cases referred to above and distinguished them on facts. The woman in the case could not be found and the learned Judge remarked that he had no doubt that the applicant knew where she was and could have produced her. He consequently did not interfere either with his conviction or with his sentence.

In *Abdul Kayum v. Emperor* (3), no reference was made to the Allahabad authorities but reliance was placed on a Madras ruling and on the strength of the remarks made there, one of the Additional Judicial Commissioners observed :—

"The mere fact that the wife may have willingly gone to the accused or that she consented to live with him would not be sufficient to take the case out of the provisions of the section. In a charge under section 498, Indian Penal Code, the willingness or consent of the wife is immaterial."

(1) I. L. R. (1934) 58 Bom. 88.

(2) 1933 A. I. R. (Oudh) 256.

(3) 1934 A. I. R. (Sind) 72.

(4) 1937 A. I. R. (Lah.) 617.

In *Mohammad Aslam Khan v. Emperor* (1), Abdul Rashid J. referred to the Sind judgment with approval and further relied on following observations made by Broomfield J. in *Emperor v. Mahiji Fula* (2):—

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“ But there may be various ways of keeping back. It need not necessarily be by physical force; it may be by persuasion, or, by allurements and blandishment. But the use of the word does require that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman.”

From the above analysis of the authorities it would be obvious that there is some confusion and conflict in this matter and that while the trend of the Allahabad, Calcutta and Bombay judgments is to interpret the word “ detains ” as used in section 498 in relation to the woman herself, the Madras, Oudh and Sind judgments interpret the word in the light of the husband’s interest only. Had there been a binding decision of this Court I would have felt no hesitation in following it in preference to the decisions of any other Court but as none such has been produced before me, I consider it advisable to have an authoritative pronouncement from a larger Bench. I may, however, add that if the view taken in the Bombay judgments prevails, there is no justification for including in the word “ detains ” the keeping back of a woman by allurements and blandishments only. To do so would in my opinion be further to confuse the issue. If a married woman feels affection for another man in preference to her husband, he would be bound to reciprocate her love and show her every kind of

(1) 1937 A. I. B. (Lah.) 617. (2) I. L. R. (1934) 58 Bom. 88.

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flattering attention that she deserves. Is it necessary, therefore, for the accused to establish in order to escape the consequence of the law that he was quite indifferent to the matter of the woman staying with him and that it was the woman herself who would not leave him? In my view if once it is held that "detention" in section 498, Indian Penal Code, does not mean detention as against the husband, or, in other words, deprivation of the husband of the wife's society, whether the person with whom the woman has chosen to live of her own accord does anything to make himself more attractive for the woman and to induce her to continue her stay or takes only a passive attitude in the matter leaving it entirely to the woman to exhibit amour for him is immaterial. In ordinary parlance "to detain" is "to keep a person in temporary custody" and "not to let him go or proceed." This naturally implies some overt act on the part of the person who detains in relation to the person detained. Mere blandishments, therefore, should not constitute any factor in the matter of detention.

On the grounds stated above, I forward this case to the Hon'ble Chief Justice for such action as he deems necessary.

The order of the Division Bench was delivered by—

BLACKER J.—In this case one Harnam Singh was convicted of an offence under section 498 of the Indian Penal Code. He came up to this Court on revision. The learned Judge before whom the revision petition was argued has sent this case up for decision by a Division Bench on the question of the meaning of the word 'detains' in section 498 of the Indian Penal Code, and it has been referred to us by order of the Hon'ble the Chief Justice.

After hearing counsel for the petitioner and the learned Advocate-General for the Crown our answer to this reference is that the word 'detains' in our opinion, clearly implies some act on the part of the accused by which the woman's movements are restrained and this again implies unwillingness on her part. 'Detention' cannot include persuasion by means of blandishment or similar inducements, which would leave the woman free to go if she wished. We are also of opinion that the word 'detains' cannot be reasonably construed as having reference to the husband. We concur on this point in the observations of the learned Judges in *Emperor v. Mahiji Fula* (1).

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With these observations we return the case to the learned Judge dealing with petitions for revision in criminal cases for decision on the merits.

FINAL ORDER.

DIN MOHMAMAD J.—This judgment will form part of my order, dated the 13th October, 1938. The case was laid before a Division Bench of this Court composed of the Hon'ble the Chief Justice and Blacker J. The learned Judges have come to the conclusion that the word "detains" as used in section 498, Indian Penal Code, implies some act on the part of the accused, by which the woman's movements are restricted, and that this again implies unwillingness on her part. They have further observed that "detention" cannot include persuasion by means of blandishment or similar inducements, which would leave the woman free to go if she wished. They have also remarked that the word "detains" cannot be reasonably construed as having reference to the husband.

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 ———
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Detention being the only basis on which the District Magistrate had upheld the conviction of the petitioner, I have no option now but to acquit him. The petitioner will be discharged from his bail bond.

A. K. C.

—————
MISCELLANEOUS CIVIL.
 —————

1938
 Oct. 21.

Before Addison and Din Mohammad JJ.
 THE PUNJAB CO-OPERATIVE BANK,
 LIMITED, AMRITSAR (PLAINTIFF)

Petitioner,

versus

THE PUNJAB NATIONAL BANK, LIMITED,
 AMRITSAR, AND OTHERS (DEFENDANTS)

Respondents.

Civil Miscellaneous No. 462 of 1938.

Indian Limitation Act (IX of 1908), S. 12 (2) and (3), Art. 179 — Application for leave to appeal to His Majesty in Council — Limitation — Time spent in obtaining copy of judgment — whether excluded.

Held, that in computing the period of limitation for an application for leave to appeal to His Majesty in Council the time requisite for obtaining a copy of the judgment complained of, cannot be excluded, sub-s. (3) of s. 12 of the Indian Limitation Act not being applicable to such a case.

Wilayati Begam v. Jhandu Mal-Mithu Lal (1), Gurmukh Rai v. Secretary of State (2), Gulab Chand v. Pearey Lal (3), and Nur Mahomed v. Hassomal (4), relied upon.

In re Secretary of State for India (5) and R. K. Banerjee v. Alagamma Achi (6), not followed.

Petition under Clause 29 of the Letters Patent and Sections 109 and 110 and Order 45, Rule 2, Civil

(1) (1927) 92 I. C. 897.

(2) 1934 A. I. R. (All.) 974.

(3) I. L. R. (1935) 57 All. 455.

(4) (1924) 78 I. C. 953.

(5) I. L. R. (1925) 48 Mad. 939.

(6) I. L. R. (1935) 13 Rang. 762.