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In re FULCHAND MAGANLAL

to Hindu law. It is sufficient in this connection to refer to the remarks made in *Parami* v. *Mahadevi*[1] as to the general rule to be gathered that a Hindu wife cannot be absolutely abandoned by her husband even if she is living an unchaste life. The reference in the judgment in *In re Shivram*[2] to the wife not making any "attempt to seek the husband's pardon for her past misconduct" is also not a test laid down under section 488 of the Code. It may, no doubt, be a circumstance to be taken into account in considering whether maintenance should or should not be awarded, but by itself it is no sufficient reason, in my opinion, for excluding a wife, who has committed a single act of adultery, from the benefit of section 488.

In view of the fact that the Bombay decision expressly says that it is only based on the particular circumstances of that case, we are not precluded from following the subsequent decisions of the Allahabad, Madras and Calcutta High Courts. In my opinion, therefore, there is no error of law in the view that the Magistrate has taken, nor does he seem to have exercised his judicial discretion in the matter improperly. I would, therefore, dismiss the application.

MIRZA, J.:—I am of the same opinion.

Application dismissed.

R. R.

CRIMINAL REVISION

Before Mr. Justice Fawcett and Mr. Justice Mirza.

EMPEROR *v.* DAGA DEVJI PATIL.*

1927

November 14

Criminal Procedure Code (Act V of 1898), section 476 B—Indian Limitation Act (IX of 1908), Article 154—Direction to prosecute—Appeal—Limitation.

An appeal under section 476 B of the Criminal Procedure Code, 1898, should be filed within thirty days of the date when the finding under section 476 is completed by an actual complaint.

Fitzholmes v. *The Crown*,[3] followed.

Per FAWCETT, J.:—"In my opinion, an appeal in such a case is, in fact, one against the order of the Court directing a complaint to be made, for the petitioner, in appeal,

*Criminal Revision No. 327 of 1927.

(1) (1909) 34 Bom. 278 at p. 283. (2) (1890) Ratanlal's Crim. Cas., p. 506.

(3) (1925) 7 Lah. 77.

will have to show that the reasons that the Court had for making a complaint and that are relied upon in its order, are erroneous. Under section 476 of the Criminal Procedure Code the Court making the complaint has to 'record a finding' that enquiry, etc., should be made; and this 'finding' clearly comes under the word 'order' in Article 154 of the Indian Limitation Act. Section 476 B gives the person affected a right of appeal from this order, but only after the complaint has been actually made."

THIS was an application in revision against an order passed by V. G. Deshpande, First Class Magistrate at Malegaon, affirmed in appeal by G. C. Shannon, Sessions Judge of Nasik.

Prosecution for perjury.

The trying Magistrate recorded a finding on August 6, 1926, that the applicant should be prosecuted for perjury. He filed a complaint on June 23, 1927.

The applicant appealed against the order on August 26, 1927; but the appeal was rejected on the ground that it was barred by limitation.

The applicant applied to the High Court.

T. N. Valavalkar, for the applicant.

No appearance for the Crown.

FAWCETT, J.:—This is an application for revision by a petitioner, whose appeal to the Sessions Judge of Nasik has been rejected as time-barred.

It appears that the petitioner is being prosecuted on a charge of having made a false statement under section 193 of the Indian Penal Code. A complaint against him was made by the First Class Magistrate, Malegaon Taluka, in the Court of the Sub-Divisional Magistrate at Malegaon on June 23, 1927. An appeal against this complaint was made beyond the period of thirty days from that date. But the appellant said that he only came to know of the complaint on August 6 and asked that the delay in presenting the appeal should be excused upon that ground. The Sessions Judge held that it was not true that he first knew of this complaint on August 6. The main reason he gives is that there had been a previous complaint against the petitioner in 1926, in which the petitioner

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appeared as an accused, but that that complaint was withdrawn for the technical reason, that it had not been signed by the Magistrate himself. That was in April or May 1927; and the appellant, therefore, knew that he was being prosecuted in the matter. It is contended by Mr. Valavalkar on his behalf that section 476 B of the Criminal Procedure Code only allows an appeal to be made after a complaint has actually been made, and that as the appeal was against the making of the complaint and not against the actual order on which that complaint was based, the case does not fall under section 154 of the Indian Limitation Act, so as to be an appeal from an "order" within the meaning of that Article. He, therefore, asks that the Sessions Judge's dismissal of the appeal should be set aside. In the alternative he contends that the finding of the Sessions Judge that the appellant did not know of the appeal till August 6, should be reversed, and the case remanded to the Sessions Judge for disposal according to law.

I have given careful consideration to Mr. Valavalkar's contention. In my opinion, an appeal in such a case is, in fact, one against the order of the Court directing a complaint to be made, for the petitioner, in appeal, will have to show that the reasons that the Court had for making a complaint and that are relied upon in its order, are erroneous. Under section 476 of the Criminal Procedure Code the Court making the complaint has to "record a finding" that enquiry, etc., should be made; and this "finding" clearly comes under the word "order" in Article 154 of the Indian Limitation Act. Section 476 B gives the person affected a right of appeal from this order, but only after the complaint has been actually made.

In the circumstances it seems to me that the case falls under Article 154, the "order" being the "finding" under section 476, when completed or supplemented by an actual complaint. Till the order is so supplemented, it is for the purposes of section 476 B incomplete, so that limitation

only begins to run from the time that the complaint is actually made.

This is in accordance with the view taken by the Lahore High Court in *Fitzholmes* v. *The Crown*,[1] and I think that we should follow that decision.

Articles 150, 154, 155 and 157 are obviously meant to cover all orders under the Criminal Procedure Code, from which an appeal lies; and the Court should, in my opinion, lean to any reasonable construction, which would bring the case of an appeal under section 476 B within the category of those for which a period of limitation is prescribed. The case is a different one to that of applications that used to be made to revoke a "sanction" under the old law. Those were held not to be "appeals" and so not to come within any period of limitation prescribed by the Indian Limitation Act: cf. *Bapu* v. *Bapu* [2] and *Pochai Meteh* v. *Emperor*.[3]

The fact that an appellant may not know that a complaint has been filed till after the thirty days prescribed by Article 154 have expired is immaterial, as the appellate Court can excuse the delay under section 5 of the Indian Limitation Act.

In the present case, the Sessions Judge has refused to do this, and I do not think that there are any sufficient grounds for our interfering in revision. The basis of his refusal is disbelief of petitioner's allegation that he did not know of the complaint of June 23, 1927, till August 6, 1927, and this involves merely a question of fact and appreciation of evidence. It is not a case where the Judge has misdirected himself as to the law applicable to the consideration of the question, as occurred in *Brij Indar Singh* v. *Kanshi Ram*.[4] I would therefore dismiss the application.

MIRZA, J.:—I agree.

Application rejected.

R. R.

[1] (1925) 7 Lah. 77.
[2] (1912) 39 Mad. 750.
[3] (1912) 40 Cal. 239.
[4] (1917) 45 Cal. 94.