

agree with my learned brother that the conviction should be set aside.

Per Curiam.—The conviction and sentence are set aside. The accused is discharged and acquitted and ordered to be set at liberty.

*Conviction and sentence
set aside.*

J. G. R.

CRIMINAL REVISION.

Before Mr. Justice Mirza and Mr. Justice Broomfield.

SAMA JETHA v. BAI WALLI, WIFE OF SAMA JETHA (ORIGINAL
COMPLAINANT).*

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March 27.

Criminal Procedure Code (Act V of 1898), section 488, clause (8)—Temporary residence of husband with wife—Jurisdiction of Court—"Last resided," meaning of.

The applicant was a permanent resident of Bombay. He married the opponent (complainant) as his *natra* wife at Surat. The opponent then stayed with the applicant and his first wife in Bombay. Owing to ill-treatment on the part of the applicant and his first wife, the opponent was sent to her mother at Surat where the applicant followed her and resided with her in the house of his mother-in-law for a month or two. The parties became reconciled and returned to Bombay but owing to fresh quarrels the applicant again took the opponent to Surat where he stayed with her for an unbroken period of two months and left her only when he was asked to sign a document in her favour. Thereafter he did not maintain her. Proceedings were then taken by the opponent for maintenance, under section 486 of the Criminal Procedure Code before the City Magistrate against the applicant who was not then residing at Surat.

Held, (1) that the City Magistrate at Surat had jurisdiction to entertain the proceedings as it was proved that the applicant had last resided with the opponent as his wife at Surat for two months;

(2) that the expression "last resided" in clause 8 of section 488 of the Criminal Procedure Code means both a permanent as well as a temporary residence.

Mrs. E. H. Jolly v. St. John William Jolly⁽¹⁾ and *Sher Singh v. Amir Kunwar*,⁽²⁾ followed.

Khairunissa v. Bashir Ahmed,⁽³⁾ referred to.

*Criminal Application for Revision No. 37 of 1930.

⁽¹⁾ (1917) 21 Cal. W. N. 872.

⁽²⁾ (1927) 49 All. 479.

⁽³⁾ (1929) 53 Bom. 781.

APPLICATION to revise the order passed by M. V. Shaikh, City Magistrate, First Class, Surat Sub-Division, directing the husband to pay Rs. 12 per mensem as maintenance to his wife.

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Facts of the case are sufficiently set out in the judgment.

U. L. Shah, for the petitioner.

N. K. Desai, with *K. L. Mehta*, for the opponent.

MIRZA, J.:—This is an application for revision of an order of the City Magistrate, First Class, Surat Sub-Division, ordering the applicant to pay to the opponent Rs. 12 per month for maintenance under the provisions of section 488 of the Criminal Procedure Code. The applicant contends that the Court at Surat had no jurisdiction to entertain the application.

The applicant is a permanent resident of Bombay. He has been in the employment of the Bombay Municipality for more than 25 years last and is in receipt of a salary of Rs. 24 per month from that body. He has a wife by regular marriage who resides with him in Bombay. Five years ago he married the opponent at Surat as his natra wife. After the marriage the opponent resided with the applicant in Bombay as his wife along with the applicant's first wife. The opponent was ill-treated by the applicant and his first wife, and as the opponent and the applicant could not live amicably together at Bombay, the applicant called his mother-in-law from Surat and sent the opponent with her mother to go and reside at Surat. Later the applicant followed the opponent to Surat and resided with her in the house of his mother-in-law for one or two months. The parties became reconciled and the opponent accompanied the applicant back to Bombay on his promising to be of good behaviour and two persons having put themselves forward as sureties for the applicant's good behaviour.

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towards the opponent while in Bombay. Quarrels having again ensued between the parties, the applicant after some time took the opponent back to Surat and left her there with her mother. The opponent has lived with her mother since then in Surat for the last three years during which period the applicant has not been maintaining the opponent. The letter, Exhibit 2 (1), from the applicant to the opponent before these proceedings shows that the applicant has ceased to entertain any affection for the opponent, and no longer wants her for his wife. It is common ground that when these proceedings were taken the applicant was not residing at Surat, and the summons in consequence was served on him in Bombay.

Clause (8) of section 488 is as follows:—
“Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife. . . .” It was admitted by the applicant before the Magistrate that he last resided with the opponent as his wife at Surat when he took her there three years ago. It is contended, however, that this residence of the applicant at Surat was a temporary residence and clause (8) of section 488 should not be made applicable to the case of a husband who has temporarily resided with his wife at another place when he had a permanent residence elsewhere. In his deposition before the Magistrate the applicant admitted that he resided with the opponent on this occasion for two months. It is also shown that in a letter he wrote at the time the applicant stated that he was residing in the house of his mother-in-law at Surat as a “gharjavai,” which expression means a son-in-law who resides permanently with his parents-in-law as a member of their family.

There is nothing in the language of section 488 (8) which would indicate that the term “last resided”

should be restricted to a permanent residence. In *Khairunissa v. Bashir Ahmed*.⁽¹⁾ Patkar J, on a review of the authorities on the subject, has thus summarised their effect at p. 785 of his judgment :

" It would follow from these decisions that where the husband and wife had a fixed place of abode or a permanent place of residence, a casual or temporary residence in any other place would not confer jurisdiction on the Court situate at that place."

Wild J. in a separate but concurring judgment expressed the following opinion (p. 787) :—

" The meaning of the words ' last resided ' in section 488 have apparently not been construed by this Court and I would prefer to follow the ruling in *Mrs. E. H. Jolly v. St. John William Jolly*,⁽²⁾ where it was held that temporary residence was sufficient to give the Court jurisdiction under sub-section (8) of section 488. It is difficult enough for a wife to recover maintenance from her husband who refuses to maintain her and to give a strict interpretation to the words ' last resided ' in section 488 would render the difficulty even greater."

Mr. Shah has tried to distinguish the case of *Mrs. E. H. Jolly v. St. John William Jolly*⁽²⁾ on the ground that at the date of the application by the wife the husband was as a matter of fact in Calcutta where the application was made. That consideration does not seem to me to have been the determining factor in the decision. The case of *Mrs. E. H. Jolly v. St. John William Jolly*⁽²⁾ seems to me to be a direct authority on the point that the residence of the husband though temporary would give jurisdiction to the Court.

In *Sher Singh v. Amir Kunwar*⁽³⁾ Mr. Justice Ashworth held that a stay of two months in a temporary place of residence with occasional visits during that period to the permanent place of residence can be regarded as amounting to a " residence " within the meaning of section 488 of the Code of Criminal Procedure. He held that the expression " resided " in clause (9), [now clause (8)] of this section includes a temporary residence and is not to be confined to permanent residence. This case seems to me to be another direct authority on the

⁽¹⁾ (1929) 53 Bom. 781.

⁽²⁾ (1917) 21 Cal. W. N. 872.

⁽³⁾ (1927) 49 All. 479.

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point and goes against the contention of Mr. Shah. The facts of the present case are stronger than were the facts in *Sher Singh v. Amir Kunwar*,⁽¹⁾ for here the applicant resided with the opponent for an unbroken period of two months at Surat and left her only when he was asked to sign a document in favour of the opponent. We are of opinion that the meaning of section 488, sub-section (8), should not be confined to a permanent residence but should also include a temporary residence of the nature established by the evidence in this case.

In the course of the trial the applicant made an offer that he would maintain the opponent if she went and lived with him in Bombay and would allow her Rs. 20 per month for the joint maintenance of herself and the applicant, giving the remaining Rs. 4 of his salary to his first wife for her separate maintenance. This offer was not accepted by the opponent. The Magistrate was satisfied from the evidence before him that the applicant's offer was not *bona fide*. We see no sufficient reason to take a different view on this point.

It has been urged by Mr. Shah that Rs. 12 per month for maintenance is an excessive amount having regard to the salary of the applicant which is only Rs. 24. As the opponent according to the findings has been ill-treated in the past by the applicant, and has had no maintenance allowance from him during the last three years we do not feel disposed to interfere with the discretion which the Magistrate has exercised in awarding Rs. 12 for maintenance to the opponent.

The rule is discharged.

BROOMFIELD, J. :—I agree. There is nothing in the language of section 488, clause (8), which makes it necessary, and if it is not necessary it is for obvious reasons undesirable, to assign a strict or technical meaning to

⁽¹⁾ (1927) 49 A.L. 479

the words "last resided" in that clause or to treat those words as denoting permanent residence only. *Mrs. E. H. Jolly v. St. John William Jolly*⁽¹⁾ is a good authority for the proposition that temporary residence is sufficient to give the Court jurisdiction. That case was approved of by Wild J. in *Khairunissa v. Bashir Ahmed*⁽²⁾ and does not appear to have been dissented from by Patkar J. in his judgment in the same case. *Sher Singh v. Amir Kunwar*⁽³⁾ is a decision of a Judge of the High Court at Allahabad to the same effect. In that case *Ramdei v. Jhunni Lal*,⁽⁴⁾ which was relied upon by Mr. Shah, has been distinguished, and it is clear that the circumstances there were quite different from those in the case before us. It appeared that the husband had merely taken his wife to her relations in a place where he did not reside in order to leave her there, and stayed with her for a week only. The present applicant's stay with his wife at Surat for two months in the circumstances described by my learned brother can fairly be said to amount to residence with her at Surat.

As regards the other points in the case I have nothing to add to what my learned brother has said.

Rule discharged.

B. G. R.

CRIMINAL TRANSFER.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Mirza and Mr. Justice Broomfield.

PARASHRAM DATARAM SHAMDASANI *v.* SIR HUGH GOLDING
COCKE AND OTHERS.*

Criminal Procedure Code (Act V of 1898), sections 526, 561A—Transfer—Frivolous and vexatious applications—Abuse of process of Court—High Court's inherent power—Applicant can be prosecuted for contempt or committed to prison—Security for costs.

Where frivolous and vexatious applications for transfer under section 526 of the Criminal Procedure Code, 1898, are resorted to as a means for preventing

*Criminal Application for transfer No. 140 of 1930.

⁽¹⁾ (1917) 21 Cal. W. N. 872.

⁽²⁾ (1929) 53 Bom. 781.

⁽³⁾ (1927) 49 All. 479.

⁽⁴⁾ (1926) 27 Cr. L. J. 820.

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