

Mal Singh and others
v.
The State
Kapur, J.

which is in the best position to judge if a prosecution is desirable. But the Court which actually hears the case has this advantage that it knows, at any rate, what the effect would have been if the fabrication of evidence had succeeded.

If the construction to be placed on the section were as submitted by the learned counsel for the petitioners, then in my opinion it will become impossible to punish persons who have committed offences mentioned in section 195(1) (b). No doubt there is section 559 of the Criminal Procedure Code which gives the power of making complaint to a successor Court or to a Court to which the previous Court was subordinate, but the view taken by the Lahore High Court, and I say so with great respect, seems to be more consistent with the words used in section 195, and I would therefore dismiss the petition and discharge the rule. The petitioners must surrender to their bail bonds to serve the unexpired portion of their sentence.

REVISIONAL CRIMINAL

Before Kapur, J.

BIR SINGH,—*Petitioner.*

versus

Mst. SIBO,—*Respondent*

Criminal Revision No. 193 of 1956

Code of Criminal Procedure (Act V of 1898)—Section 488—Applicability of sub-section (4) of Section 488—Words “without any sufficient reason”, meaning of—Offer of husband to take back wife, requirements of.

1956
June, 6th.

Held, that the words “without sufficient reason”, in section 488 of the Code of Criminal Procedure, are objective and not merely subjective, and merely because the wife in a particular case has not been able to explain herself properly is no reason for the application of sub-section (4) of section 488, Criminal Procedure Code.

Held also, where the husband offers to take back the wife, the offer to be effective has to be bona fide.

Sama Jetha v. Bai Wali (1), and *Ram Singh v. Mt. Ram Bai* (2), referred to.

Case reported under section 438 of Criminal Procedure Code, by Shri G. C. Jain, Sessions Judge, Jullundur, with his letter No. 191, R. K., dated the 14th February, 1956, for revision of the order of Shri Onkar Nath, Magistrate, 1st Class, Jullundur, dated the 27th June, 1955, ordering to pay Rs. 40 per mensem to Mst. Sibbo, respondent for herself and for her son as maintenance allowance.

Complaint under Section 488, Criminal Procedure Code.

The facts of this case are as follows:—

On 29th September, 1954, Mst. Sibbo made an application under Section 488, Criminal Procedure Code, for being allowed maintenance for himself and for her son aged 8 years against Bir Singh her husband on the plea that she was turned out by him about five years before the institution of her application and that he failed to maintain her during this period. The application was tried by Shri Onkar Nath, Magistrate 1st Class, Jullundur. By means of his order, dated 27th July, 1955, he directed the respondent to pay to the applicant maintenance at the monthly rate of Rs. 40. The respondent Bir Singh has come up to this court with a petition under Section 438, Cr. P. C. for revision of the order passed by the learned Magistrate and for dismissing the petition of Mst. Sibbo.

The respondent denied the allegation that he had turned the petitioner out of his house and had refused to maintain her. He on the other hand alleged that the petitioner was under the influence of her mother who for some unknown reasons was not willing to allow the petitioner to live with him. In the trial Court he offered to take the petitioner back with him to his house and to maintain her if she consented to live with him. To this offer the petitioner agreed but only on the condition that

(1) I.L.R. 54 Bom 548, 552

(2) A.I.R. 1943 Lah. 223

he should first go to her mother's house and should take her from there. She expressed her unwillingness to go with him straight from the court or even to go to his house subsequently if he did not come to her mother's house and take her from there. To this condition put forward by the petitioner, the respondent was not prepared to agree. The Magistrate from this circumstance deduced a conclusion that the offer to take back the wife made by the husband was not a genuine one and ordered payment of Rs. 40 per mensem as maintenance. The learned Magistrate did not arrive at any definite finding as regards the means and income of the respondent. He only said in his judgment that the respondent appeared to belong to an average middle class family, that he had no land in his name and that it had not been proved as to what other business he was doing. From the dress, the defendant was wearing when he was appearing in court and from the fact that he had engaged a leading criminal lawyer, the Magistrate came to a conclusion that he could afford to pay the amount of maintenance ordered.

The proceedings are forwarded for revision on the following grounds:—

In my opinion, the petitioner has not been able to justify on any reasonable ground her refusal to live with the respondent. There is no rule of law according to which she could force the husband to come to her mother's house and to beg her mother that she should be allowed to go with him. It was an unreasonable condition that was placed by the petitioner which she was not entitled to do. As a wife, it is her legal obligation to perform her marital duties and to allow the husband restitution of his conjugal rights. In other words, it is incumbent upon her to live with her husband unless there be any legally sufficient grounds entitling her to live apart. The only ground that has come to light is that the husband refuses to beg for her to her mother which I do not think can be considered reasonable by any stretch of language. As pointed out by the learned Magistrate in his judgment, the parties in this case are standing on false notions of prestige which cannot be considered as reasonable.

The law is clear that if the husband offers to take back the wife, the wife must show sufficient reasons for her

refusal to do so. If she fails to show any such reason, then her application for maintenance must be disallowed. In the present case, she has not been able to show any such reason, therefore, her application for maintenance is liable to be dismissed.

I accordingly make a recommendation to the High Court that the order passed by the learned Magistrate be quashed and the application of Mst. Sibò be dismissed.

C. L. AGGARWAL, for Petitioner.

VED VYAS, for Respondent.

ORDER OF THE HIGH COURT.

KAPUR, J. This is a recommendation made by Mr. G. C. Jain, Sessions Judge, Jullundur, dated the 21st December, 1955, to the effect that the order made by the Magistrate under section 488, Criminal Procedure Code, be quashed.

Kapur, J.

Mst. Sibò was married to Bir Singh and they have a son aged eight. On the 29th of September, 1955 the wife made an application under section 488 of the Criminal Procedure Code asking for maintenance. Evidence was recorded by the Magistrate. In support of the application Sewa Singh, a Sarpanch of the village, appeared as a witness and stated that he went with a Panchayat to the husband to take back the wife but he refused to take her back. The cross-examination does not disclose that this part of the statement about the taking of the Panchayat was challenged. The next witness is Pritu, a brother of the wife, who has also stated that the husband has refused to keep the wife and has neglected to maintain her. The wife herself appeared as P.W. 3 and stated that she was married when she was 13 and she lived with the husband for two or three years

Bir Singh
v.
Mst. Sibo

Kapur, J.

and after that she was given a beating and turned out of the house and the husband himself left her at her mother's place. In cross-examination she stated that she did not know why her husband ill-treated her or was not prepared to take her back. She also said that she was prepared to go with her husband provided the Panchayat of the village gave an assurance and the husband were to come to her parents' house and take her from there. What she seems to have said is that she was only prepared to go if she had assurance of her safety.

The husband went into the witness-box and stated that the wife was taken away by her mother who complained that she (the wife) was made to do all kinds of difficult household chores. He also said that in the previous Jeth he had taken Lachhman Singh and Mehr Singh to the wife but she refused to return to his house and he offered to take her with him from the Court but he was not prepared to go to her parents' house. Saran Singh R. W. 1 appeared in support of the husband's case and said that the wife had refused to come with the husband, but in cross-examination he stated that the mother had told them that she was not prepared to send the wife to her husband because she was made to do all kinds of unpleasant household work and she was subjected to ill-treatment. R. W. 2 Lachhman Singh's statement is similar, and in cross-examination he stated that the mother had refused to send the daughter because of the ill-treatment of the husband.

On the 31st May 1955 the learned Magistrate gave an opportunity to the parties to come to terms but unfortunately nothing came out of it as is shown by the order of the Magistrate dated the 15th June, 1955. Thereupon the learned Magistrate

made an order awarding Rs. 40 per mensem as maintenance to the wife. He relied upon the statement of Sewa Singh P. W. 1 and held that the husband was not prepared to keep the wife although she was quite prepared to go to his house. In regard to the offer of taking her, he was of the opinion that it was a *mala fide* offer.

Bir Singh,
v.
Mst. Sibo
Kapur, J.

A revision was taken to the learned Sessions Judge who seems to have misdirected himself in regard to the law applicable to such cases. He was of the opinion—

“The law is clear that if the husband offers to take back the wife, the wife must show sufficient reasons for her refusal to do so. If she fails to show any such reason, then her application for maintenance must be disallowed. In the present case, she has not been able to show any such reason, therefore, her application for maintenance is liable to be dismissed.”

It appears to me that the attention of the learned Judge was not drawn to two decided cases. In *Sama Jetha v. Bai Wali*, (1), it was held that an offer to be effective has to be *bona fide*. In the Lahore High Court this matter was considered by Blacker, J., in *Ram Singh v. Mt. Ram Bai* (2). Interpreting the words “without any sufficient reason” the learned Judge said at page 225—

“At this stage I must say that it seems to me that the words ‘without any sufficient reason’ are objective and not subjective. The wife’s maintenance cannot be refused merely because on account of her poverty of expression or

(1) I.L.R. 54 Bom. 548, 552

(2) A.I.R. 1943 Lah. 223

Bir Singh
v.
Mst. Sibe
Kapur, J

her failure to understand her own motives she is unable to analyse and state fully her reasons for refusing to go back to her husband. It is for the Court to examine the circumstances and see if those circumstances are or are not sufficient to justify the wife's refusal to accept the husband's offer."

In the recommendation sent the learned Sessions Judge does not seem to have examined the circumstances and seen whether they are sufficient to refuse the husband's offer or not. After all the words used in the section are objective and not subjective, and merely because the wife in a particular case has not been able to explain herself properly is no reason for the application of subsection (4) of section 488, Criminal Procedure Code. In the present case I find that the husband and wife have been living apart for the last two years or so. The finding of the learned Magistrate was that the wife had been turned out by the husband and had been ill-treated. She was quite prepared to go back to the husband if he gave a guarantee of the Panchayat that she would not be treated harshly. He has not only refused to do so but he has even refused to go to her parents' village to fetch her back. It seems that the learned Magistrate took a correct view in coming to the conclusion that the offer was a *mala fide* one and, as I have said, the learned Sessions Judge misdirected himself because he approached the case with a wrong view of the law.

I am satisfied on this evidence that it was the husband who has not made it possible for the

marital home to continue and the learned Magistrate rightly ordered maintenance in the present case.

Bir Singh
v.
Mst. Sibon

Kapur, J.

Mr. Charanjiva Lal Aggarwal urges most vigorously that the husband and wife should be called in this Court and efforts be made to bring about a reconciliation. The learned Magistrate tried that and was unsuccessful, and I do not think it will serve any useful purpose by getting the husband and wife here. I would, therefore, refuse to accept the recommendation and dismiss the petition and discharge the rule.

REVISIONAL CRIMINAL

Before Kapur, J.

JIA LAL *alias* JAI LAL,—*Convict-Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 491 of 1956

Suppression of Immoral Traffic Act (IV of 1935)—Section 5—Offence under, proof of—Practice of getting persons to go and commit sexual intercourse with wives of poor persons in order to prove an offence under the Act deprecated.

1956

June, 7th.

Held, that the proof was of the mere fact that a person was having sexual intercourse with the accused's wife and that he had paid money in this behalf. But this is a far-off step from saying that the accused has been proved to be knowingly living, wholly or in part, on the earnings of the prostitution of another person. Thus no case was proved against the accused and he was entitled to acquittal.

Held further, that the practice of getting persons to go and commit sexual intercourse with the wives of poor persons in order to prove offences under Suppression of Immoral Traffic Act, must be strongly deprecated. It may be that in this particular case the police has acted with