

REVISIONAL CRIMINAL

*Before Kapur, J.*SHRIMATI SASHI KANTA,—*Complainant-Petitioner**versus*LALA JAGMOHAN LAL,—*Respondent*

Criminal Revision No. 158-D of 1953.

1954

March, 4th

Code of Criminal Procedure (Act V of 1898)—Section 488—“Resided together”—Temporary residence with wife at her parents’ house—Whether sufficient to give jurisdiction to Court.

The husband came to reside with the wife’s parents in Delhi with the object of getting employment there but went back after seven or eight days as he did not like the climate of Delhi. After some months he again came to Delhi and resided at the house of his wife’s parents with the object of extorting some money and got himself employed with some firm in Delhi. He again went back after a few days.

Held, that in these circumstances, the case does fall under the words “resided together” and the Delhi Magistrate has jurisdiction to try the application under section 488 of the Code of Criminal Procedure.

Sama Jetha v. Bai Wali (1), *Khairunissa v. Bashir Ahmed* (2), *Jolly v. Jolly*, (3), and *Sher Singh v. Amir Kunwar* followed; *Charan Das v. Mt. Surasti Bai* (5) held not applicable.

Petition under sections 435 and 438 of the Code of Criminal Procedure for revision of the order of Shri Y. L. Taneja, 1st Additional Sessions Judge, Delhi, dated the 6th August 1953, affirming that of Shrimati Kaushalya Pahwa, Lady Magistrate, 1st Class, Delhi, dated the 23rd May 1953, holding that the Court has got no jurisdiction to take cognizance of the application.

KANWAL KISHORE RAIZADA, for Petitioner.

K. L. ARORA, for Respondent.

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- (1) I.L.R. 54, Bom. 548
 (2) I.L.R. 53 Bom. 781
 (3) 21 C.W.N. 872.
 (4) I.L.R. 49, All. 479.
 (5) A.I.R. 1940, Lah. 449

JUDGMENT

KAPUR, J. This is a rule obtained by the petitioner and is directed against an order passed by Mrs. Pahwa, Magistrate, 1st Class, Delhi, refusing to entertain the application under section 488 of the Code of Criminal Procedure on the ground of want of jurisdiction.

Kapur, J.

On the 5th November 1952, the petitioner Shashi Kanta brought an application against her husband under section 488 of the Code of Criminal Procedure on the ground that he was treating her cruelly and was always assaulting her, the reason being that he wanted some money from her parents which they were unfortunately unable to pay. The jurisdiction was based on the fact that he came to the house of her parents and lived with her at Delhi for about a month and during the course of that stay he tried to extort Rs. 2,000 from her parents which they could not pay.

In the witness-box Shashi Kanta stated that in the month of Bhadon, i.e., August 1951, the opposite party came to stay at Delhi at the house of her father who got him employed where after working for seven or eight days he went back as he did not like Delhi, but she did not go with him as she was unwell. In Phagan, i.e., March 1952, he again came and stayed at her parents' house for a month and asked her to get Rs 2,000 from her parents which they were unable to give. Thereupon the opposite party returned to Sardhna which is his permanent place of residence. She was cross-examined, but no question seems to have been directed on these two particular points. Counsel states that questions were put, but she stuck to her statement in examination-in-chief. The next witness is Murari Lal, P.W. 2 who states that the opposite party was working as an apprentice at the shop of Ram Gopal-Bhagwan Das, but he stayed there only for a week or two weeks. His statement is not of much

Shrimati Sashi assistance because the respondent does not seem to have worked in his presence. The father of the girl is P.W. 3 who deposed that he got the opposite party employed as an apprentice at the shop of Krishna Churan Karyalia where he worked for about ten or fifteen days and then left and in the month of Phagan, i.e., March he again came and stayed with them but went away as his object was to get money which he did not get. In cross-examination he stated that the respondent was trying to learn the work of a *munim*. Suraj Bhan Aggarwal, P.W. 4 states that the opposite party worked at his shop for about fifteen or twenty days and then left the shop. These facts are denied by Jagmohan Lal, the opposite party.

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The learned Magistrate has found that the opposite party did come to stay in Delhi, but he did not intend to stay for any length of time and that his second visit was really to obtain a loan, but while the father of the girl was trying to arrange money, he (the father) got him employed, but this, in the opinion of the learned Magistrate, was not sufficient to give her jurisdiction to try the matter. A case very similar to the present one was tried by the Bombay High Court in *Sama Jetha v. Bai Wali* (1). There the husband went to stay at the house of his mother-in-law and stayed for about a month or two with his wife and it was held that that was included in the words "resided together" as used in section 488 of the Code of Criminal Procedure. At page 552 it was observed by Mirza J.—

"We are of opinion that the meaning of section 488, subsection (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 *Khairunissa v. Bashir Ahmed*, (2), Wild J. interpreted the words "last resided" as being "temporary residence" which was sufficient to give him

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

(2) I.L.R. 53, Bom. 781.

jurisdiction. He there followed *Jolly v. Jolly* (1), Shrimati Sashi Kanta and this case seems to lay down that the residence of the husband with the wife at a place, even though temporary, would give jurisdiction to the Court. Reference was also made to *Sher Singh v. Amir Kunwar*, (2), where Ashworth J. 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.

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Mr. Kundan Lal has relied on a judgment of the Lahore High Court in *Charan Das v. Mt. Surasti Bai*, (3), where it was held that in case a person has a fixed residence, a visit to another place for however long a period, as long as it is casual, will not confer jurisdiction. This case, however, in my opinion, has no application to the facts of the present case because in the first instance the duration of those visits was a very casual one never exceeding two or three days and the husband had gone to the place where his wife was residing with the object of persuading her to return to him, but in the present case the facts are totally different.

On the first occasion when the husband came to reside with the wife's parents his object was to get employment in Delhi and even though the visit ended after a stay of seven or eight days, the reason was that the husband did not like the climate of Delhi. It was not a casual visit as it was in the Lahore case. On the second occasion when the husband came even though his object was to extort money, he got himself employed which shows that he intended to stay on as long as he had hopes of getting money. In these circumstances, in my view, the case does fall under the words "resided together", and with due deference to the opinion of the learned Magistrate I think that she should have held that she had jurisdiction.

(1) 21 Cal.W.N. 872.
 (2) I.L.R. 49. All. 479.
 (3) A.I.R. 1940, Lah. 449.

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I would, therefore, allow this petition, set aside the order of the learned Magistrate and make the rule absolute. I should have added that the petitioner went to the Court of the Additional Sessions Judge who was of the same opinion as the learned Magistrate.

I direct that the parties should appear in the Court of the Magistrate who is working in place of Mrs. Pahwa on the 29th of March 1954.

REVISIONAL CRIMINAL

Before Khosla and Kapur, JJ.

1954

March. 9th

MOOL CHAND,—*Convict-Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 142-D of 1953

The Public Gambling Act (III of 1867)—Section 5—Warrant issued by Superintendent of Police invested with powers of District Superintendent of Police to issue warrants under section 5—Whether legal—The Police Act (V of 1861)—Section 23—the words “to detect and bring offenders to justice”—whether include power to issue a warrant.

A warrant was issued under section 5 of the Public Gambling Act by the Superintendent of Police, who had been invested with powers of District Superintendent of Police to issue warrants under section 5 of the Public Gambling Act, 1867, and the house of the petitioner was raided in pursuance of this warrant. The question arose whether the warrant had been issued by proper authority.

Held, that there was nothing wrong or illegal in the power which was given by the Chief Commissioner to the Superintendent of Police to issue warrants under section 5 of the Public Gambling Act, 1867, by notification No. F.6(24)/56-Home, dated the 2nd February 1950. In section 1 of the Police Act the District Superintendent of Police so appointed by a State Government is to perform all or any of the duties of a District Superintendent of Police under the Police Act in any district and section 23 gives the police the power to detect and bring offenders to justice and it cannot be said that the power to detect and bring offenders to justice should be circumscribed to offences which come only under the Penal Code. This will be too narrow an interpretation and is not justified by the wording of the section.