In my opinion, the definition of a hospital for the purposes of this Act should not be circumscribed to a big charitable institution where patients in very large numbers are received, but it may apply to any place which is used for the purposes of administering to the need of the sick and the wounded, and in my opinion the premises in dispute are a hospital and could not be requisitioned.

I would therefore allow this petition and would quash the order of requisitioning and would issue a writ of mandamus to the District Magistrate to forbear from interfering with the rights of the petitioner.

REVISIONAL CRIMINAL

Before Bhandari, C.J.

MOHINDAR SINGH,—*Petitioner*

versus

MST. HARBHAJAN KAUR,—*Respondent*

Criminal Revision No. 595 of 1954

Repealing and Amending Act (XLVIII of 1952)—Section 4—Effect of—Repealing and Amending Acts—Object of.

1954

August, 18th.

Held, that the provisions of section 4 of the Repealing and Amending Act, 1952, make it quite clear that although the Code of Criminal Procedure (Amendment) Act, 1949, has been repealed, the substantive portion of the Act which was incorporated in the Code of Criminal Procedure and which became a part and parcel of it, continues to remain intact and is not repealed by the Act of 1952.

Held further, that Repealing and Amending Acts are enacted from time to time in order to repeal enactments which have ceased to be in force or have become obsolete or the retention whereof as separate Acts is unnecessary. The principal object of Repealing and Amending Acts is

to "excise dead matter, prune off superfluities and reject clearly inconsistent enactments." An Act of this kind may thus be regarded as a legislative scavanger.

Case reported by Shri Sundar Lal, Additional Sessions Judge, Jullundur, with his No. 196J/J7, dated 7th May, 1954, under section 488, Criminal Procedure Code.

Revision from the order of Shri Sukhdev Parshad, Magistrate, 1st Class, Jullundur, dated the 24th July, 1953. The facts of the case are as follows:—

Harbhajan Kaur brought a complaint against her husband Mohinder Singh under section 488, Cr. P.C. claiming maintenance for herself and for her daughter aged about 3 years. She was married to Mohinder Singh in 1945. Two daughters were born, one of which died and the other aged 3/4 years is living with her. She alleged that her husband and his parents had started disliking her for giving birth to a daughter instead of a son on the second occasion and therefore forcibly turned her out of their house. An attempt was subsequently made by a deputation of two persons, P.Ws. 2 and 3, sent her father to the husband but the latter had refused to keep her. It was also alleged that the husband had married a second wife shortly before the application was filed. The husband admitted that he had married a second wife but expressed his willingness to keep his first wife with him. The trial court accepted the application and directed the husband to pay Rs. 40 per month as maintenance to his wife and Rs. 25 per month as maintenance for their daughter. The husband felt aggrieved and has come up in revision.

2. The main contention of the learned counsel for the petitioner is that when the husband had expressed his willingness to take back the wife and the child, it was the duty of the learned Magistrate to enquire from the wife if she was prepared to go back to her husband and the failure to do so amounts to illegality in the order for maintenance particularly in the absence of a finding that the order was not *bona fide* or the reason given by the wife for not going back to her husband was sufficient and relied upon A.I.R. 1934 Lahore 946. In the present case, the learned Magistrate did enquire from the wife if she was prepared to go back to her husband because the husband had expressed his willingness to take her and the daughter back, but he failed to give a finding whether the reason given by her for refusing to go back to her husband was sufficient. The wife had stated in the witness-box that she was not prepared to go and live with her husband because she did not feel inclined to do so. No finding was given if it was a sufficient ground.

3. It appears, the learned Magistrate mainly, if not solely, relied upon the provisions of Act XV of 1949. [The Code of Criminal Procedure (Second Amendment) Act 1949] according to which the second marriage of the husband is in itself a sufficient ground for maintenance for the first wife. It appears, however, that it was not brought to the notice of the learned Magistrate, that this Act had been repealed by Act XLVIII of 1952 (The Repealing and Amending Act, 1952).

4. I would, therefore, forward these proceedings to the High Court with the recommendation that the order of the learned Magistrate be set aside and the complaint be directed to be decided afresh in the light of the above remarks.

ORDER OF THE HIGH COURT.

BHANDARI, C. J. This petition raises the question whether the portion of proviso (1) to sub-section (3) of section 488 of the Code of Criminal Procedure which was inserted by the Code of Criminal Procedure (Amendment) Act, 1949, has been repealed by the Repealing and Amending Act of 1952. This portion is in the following terms:— Bhandari, C.J.

> "If a husband has contracted marriage with another wife or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

The facts of the case are simple and not in dispute. On the 24th July, 1953, a Magistrate of the first class of the Jullundur District made an order under section 488 of the Code of Criminal Procedure directing the husband to pay a certain sum of money every month for the maintenance of his wife. This order was based principally on the ground that the husband had contracted a marriage with another wife. The learned Additional Sessions Judge recommends that this order

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be set aside as it appears to have been passed by the Magistrate in ignorance of the fact that the Act of 1949 was repealed by the Act of 1952 and the fact that the provision of law on which the order was based had ceased to exist.

Mr. Amolak Ram Kapur, who appears for the husband, contends that when the Act of 1949 was repealed by the Act of 1952 the earlier Act was taken out completely from the statute book of the country and as the new provision was inserted in section 488 by virtue of the Act of 1949 this provision too was automatically removed from the Code of Criminal Procedure. If the new provision has ceased to exist it is obvious that the fact that the husband has contracted a second marriage may or may not be considered to be a just ground for the wife's refusal to stay with him.

I regret I am unable to concur in this contention. Repealing and Amending Acts are enacted by the Legislature from time to time in order to repeal enactments which have ceased to be in force or have become obsolete or the retention whereof as separate Acts is unnecessary. The principal object of Repealing and Amending Acts is to "excise dead matter, prune off superfluities and reject clearly inconsistent enactments." An Act of this kind may thus be regarded as a legislative scavanger. It consists usually of two parts: a repealing part and an enacting part. The repealing part consists of a schedule which contains the names of Acts which are sought to be repealed either because they have expired or because they have become unnecessary. The enacting part consists of a number of saving clauses one of which is designed to secure that

enactments in which a repealed enactment has been applied, incorporated or referred to should be unaffected by its repeal.

The Repealing and Amending Act of 1952 was also designed to secure two ends, namely to repeal certain enactments and to preserve certain others. It repealed the Act of 1949 and obliterated it completely from the record of Parliament. But at the same time it declared in section 4 that—

> "The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to; . . . . . ."

The provisions of this section make it quite clear that although the Act of 1949 has been repealed, the substantive portion of the Act which was incorporated in the Code of Criminal Procedure and which had become a part and parcel of it, continues to remain intact. The Act of 1952 was enacted with the sole object of getting rid of a certain quantity of obsolete matter.

The view taken by the Additional Sessions Judge that as the Act of 1949 has been repealed and as the new provision which was inserted in section 488 by the Act of 1949 must fall with the Act by which it was enacted appears to me to be wholly misconceived. I am accordingly of the opinion that there is no force in the recommendation made by him. The petition must therefore be dismissed.