

REVISIONAL CRIMINAL

*Before Harnam Singh, J.*KARNAIL SINGH,—*Petitioner.*

1953

July, 19th

*versus*MST. BACHAN KAUR,—*Respondent.*

Criminal Revision No. 282 of 1953.

Code of Criminal Procedure (Act V of 1898)—Section 488—Person against whom proceedings are taken—Whether is an 'accused'—Section 342—Whether applies to proceedings under section 488—Non-examination under section 342 of the person proceeded against under section 488—Whether vitiates the order granting maintenance.

Held, that there has been a deliberate change in the language of section 488 of the Code of Criminal Procedure by the removal therefrom of the word "accused" by the Code of Criminal Procedure (Amendment) Act, XVIII of 1923, showing a clear intention of the Legislature that the person against whom proceedings are taken under section 488 of the Code, does not fall in the category of the accused.

Held further, that section 342 of the Code, does not govern cases under section 488 of the Code, and, therefore, the non-examination under section 342 of the Code, of the person proceeded against under section 488 of the Code, does not vitiate the order granting maintenance.

Demello v. Mrs. Demello (1), not approved.

Case reported by Shri Gurcharan Singh, Additional Sessions Judge, Ferozepore, with his No. 486 of 25th March, 1953, under section 438 of the Criminal Procedure Code.

Revision against the order of Shri Beni Parshad, Magistrate, 1st Class, Zira, dated 24th October, 1952, ordering Karnail Singh to pay a maintenance allowance of Rs. 30 per mensem to his wife, Mst. Bachan Kaur, under section 488, Criminal Procedure Code.

J. N. SETH, for Petitioner.

Y. P. GANDHI, for Respondent.

This is a revision petition against the order of Shri Beni Parshad, Magistrate 1st Class, Zira, dated 24th October, 1952, allowing Rs. 30 as monthly maintenance to Mst. Bachan Kaur, against her husband Karnail Singh.

The facts of this case are as follows :—

Mst. Bachan Kaur, filed an application under section 488, Cr. P. Code, claiming Rs. 50 per mensem as maintenance from the respondent on the ground, that she was married some 9 years ago with the respondent, and that she lived with her husband as his wife and gave birth to two daughters. It is also mentioned, that the respondent treated her well so long as her father-in-law was alive, but thereafter he fell into bad ways and gave beating to the petitioner and turned her out of the house. In spite of *panchayats* being taken, she was not kept in the house and lastly turned her out of the same four years ago by giving her beating and has remarried nearly two years ago.

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

It is urged on behalf of Karnail Singh, that the maintenance fixed is excessive and that his statement was not recorded under the provisions of section 342, Cr. P. Code, which has vitiated the trial. His counsel has cited, A.I.R. 1926 Lahore 667, wherein it was observed, that the omission of the Magistrate to examine the accused as required by section 342, Cr. P. C. vitiated the order granting maintenance. No authority to the contrary has been cited by the learned counsel for Mst. Bachan Kaur, who claimed in her revision the increase of the maintenance allowance. In view of the above cited authority, I cannot but agree with the contention raised by the learned counsel for Karnail Singh.

I thus forward the revision petition of Karnail Singh to the High Court with the recommendation, that the order of the Magistrate, dated the 24th October, 1952, allowing maintenance to Mst. Bachan Kaur against Karnail Singh, be set aside with the direction to try the case in accordance with law.

MR. J. N. SETH, Advocate, for Petitioner.

MR. Y. P. GANDHI, Advocate, for Respondent.

ORDER OF THE HIGH COURT.

HARNAM SINGH, J. In case No. 74/3 of 1952, *Shri Harnam Singh, Beni Pershad, Magistrate, ordered that a sum of rupees 30 be paid by Karnail Singh respondent to Mussamat Bachan Kaur on account of maintenance from the date of the application under section 488 of the Code of Criminal Procedure, hereinafter referred to as the Code.* J.

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Karnail Singh applied under section 435 of the Code for the revision of the order passed by the Magistrate on the 24th of October, 1952.

Harnam Singh, J.

In the revisional proceedings, Karnail Singh raised double-barrelled objection to the order passed by the Court of first instance. In the first place, it was said that the non-examination of the applicant under section 342 of the Code vitiated the trial. In the second place, it was said that the maintenance fixed was excessive.

Basing himself on *Demello v. Mrs. Demello* (1), the Additional Sessions Judge, Ferozepur, has reported the case to this Court with a recommendation that the order of the Magistrate passed on the 24th of October, 1952, may be set aside.

In A.I.R. 1926 Lah. 667, Shadi Lal, C. J., said—

“While I am not prepared to endorse all the reasons recorded by the learned Sessions Judge in support of his opinion that the trial of the case by the Magistrate was illegal, I consider that the omission of the Magistrate to examine the accused, as required by Section 342, Criminal P.C., vitiated the order granting maintenance.”

In these proceedings the question that arises for decision is whether the non-examination of the applicant under section 342 of the Code, vitiated the order granting maintenance.

Section 342 of the Code reads :

“342(1). For the purpose of enabling *the accused* to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning *the accused*, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid,

(1) A.I.R. 1926 Lah. 667.

question him generally on the case after the witnesses for the prosecution have been examined *and before he is called on for his defence.* Karnail Singh
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- (2). The *accused* shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them ; but the Court and jury (if any) may draw such inference from such refusal or answers as it thinks just. Harnam Singh,
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- (3). The answer given *by the accused* may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
- (4). *No oath shall be administered to the accused.*"

By the Code of Criminal Procedure (Amendment) Act XVIII of 1923, subsection (7) of section 488 of the Code, was repealed and subsections (8) and (9) of section 488 of the Code were re-numbered subsections "(7) and (8)". In subsection (8) so re-numbered the words "proceedings under this section may be taken against *any person*" were substituted for the words "the *accused* may be proceeded against" appearing in the old subsection (9). Subsection (7) which was repealed by the amending Act, ran as follows :—

"7. The accused may tender himself as a witness, and in such case shall be examined as such".

From what I have said above, it is plain that there has been a deliberate change in the language of section 488 of the Code by the removal therefrom of the word "accused" showing a clear intention of the Legislature that the person against whom proceedings are taken under section 488 of the Code, does not fall in the category of the accused.

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Section 340, provides :

“ 340(1). Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) *Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.*”

In proceedings under section 488 of the Code, any person against whom proceedings are taken may offer himself as a witness in such proceedings while section 342 of the Code provides that no oath shall be administered to an accused person. Clearly, section 342 of the Code has no application to a person against whom proceedings are taken under section 488 of the Code.

For the foregoing reasons, I hold that section 342 of the Code does not govern cases under section 488 of the Code.

Mr. Jagan Nath Seth urges that maintenance fixed is excessive. Admittedly, Karnail Singh owns 22 *Ghumaons* of agricultural land. *Mussamat* Bachan Kaur gave evidence that the annual income of Karnail Singh was rupees 6,000 or 7,000. In cross-examination the statement made by *Mussamat* Bachan Kaur with respect to the annual income of Karnail Singh was not challenged. Karnail Singh in the written statement pleaded that his annual income was rupees 400 or 500. Karnail Singh did not give evidence on oath. In fixing the maintenance the Court has found that the annual income of Karnail Singh was not less than rupees 1,500. That being so, I find that the maintenance fixed is not excessive.

In the result, while confirming the order passed by the Court of first instance on the 24th of October, 1952, I dismiss Criminal Revision No. 282 of 1953.