

that security proceedings were pending against both parties, but in dealing with the present petition I do not feel that I can take action on any subsequent events and if fresh grounds for eviction have come into existence since the decision of the present petition the landlord may, if so advised, institute fresh proceedings for ejection. The result is that I accept the present petition and restore the order of the Rent Controller dismissing the ejection petition. The parties, however, will bear their own costs.

Kundan Lal
v.
Amar Nath

Falshaw, J.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, C.J.

BALRAJ KUMAR,—Petitioner.

versus

SUDESH KUMARI,—Respondent.

Criminal Revision No. 95-D of 1961.

Code of Criminal Procedure (Act V of 1898)—Section 488—Application for maintenance by the wife—In reply husband alleging that wife was living in adultery—Who should lead evidence first—Wife or husband.

Held, that it cannot be set as a standard practice that, wherever in maintenance proceedings a husband raises the defence of adultery on the part of the wife, he should be made to lead his evidence first. The general principle is that it is for the wife to produce what evidence she has in support of her case and to establish that she has a good case. The wife can be permitted, if necessary, in the interest of justice, to lead further evidence in rebuttal of the evidence led by the husband in support of the allegation of adultery.

1962

Jan., 5th

Case reported by Shri Gurbachan Singh, Additional Sessions Judge, Delhi, on 6th February, 1961.

(Section 438 of the Code of Criminal Procedure).

Petition for revision under section 435/439, Criminal Procedure Code, against the order of Shrimati Kushalya Pahwa, Lady Magistrate, Ist Class, Delhi, dated 28th

October, 1960, for recommending to the High Court that the order dated 23rd October, 1960, of the Lady Magistrate be set aside and the respondent be directed to lead her evidence.

GURCHARAN SINGH, ADVOCATE, for Petitioner.
Respondent by : in person.

ORDER

Balraj Kumar
v.
Sudesh Kumari
Falshaw, C. J.,

FALSHAW, C. J.—These are two cases under section 488 Criminal Procedure Code which have been referred to this Court by an Additional Sessions Judge with the recommendation that orders passed in two cases on the same date, the 28th of October, 1960, by the Lady Magistrate should be quashed.

Briefly the facts are that in one case the wife *Shrimati* Sudesh Kumari, instituted proceedings against her husband Balraj Kumar and in the other case *Shrimati* Chander Wati, instituted proceedings against her husband Vir Pal, the gist of the petitioner's case in each case being that her husband had ill-treated and turned her out and refused to maintain her. In each case the husband on his appearance put in a written reply to the petition in which liability for payment of maintenance was denied primarily on the ground that the wife was living an adulterous life, a man being named in each case as the person with whom the wife was alleged to be living in adultery.

On these allegations by the husbands the learned Lady Magistrate adopted a similar procedure in each case and instead of pursuing the ordinary course of ordering the wife to lead her evidence first in proof of her claim, she ordered that first of all the husband should lead his evidence regarding the alleged misconduct of the wife.

This course appears to have been based on the brief judgment of Somasundaram, J. in *Raghupathula Subbayamma and others v. Raghupathula Venkata Rao*, (1) in which an earlier decision of *Kista Pillai v. Amirthammal*, (2) was followed. In the latter case it appears that one of the husband's

(1) 1954 Cr. L.J. 85 (Madras).
(2) A.I.R. 1938 Mad. 833.

defences to the wife's maintenance petition was that she was living an adulterous life, but this allegation was only made by the last witness examined in the proceedings. The learned Judge thought that this had prejudiced the wife's case and he observed, "My opinion is that in a case of claim for maintenance like this the respondent who puts forward a charge of living in adultery against the petitioner as his only defence to the claim for maintenance ought to begin his case and the petitioner against whom this charge is made ought to have an opportunity of adducing rebutting evidence." In the circumstances he remanded the case for additional evidence of both parties directing that the wife should have the last word. His remarks were merely repeated in the other case.

Balraj Kumar
v.
Sudesh Kumari
Falshaw, J.

I am inclined to agree with the view of the learned Additional Sessions Judge that this decision ought not to be regarded as setting a standard practice that, wherever in maintenance proceedings a husband raises the defence of adultery on the part of the wife, he should be made to lead his evidence first. The general principle is that it is for the wife to produce what evidence she has in support of her case and to establish that she has a good case, and in the present cases the allegation of adultery is not the only ground on which the husbands are resisting the petition. I, therefore, agree with the recommendation that the wives in the present cases should lead their evidence first and quash the orders of the learned Lady Magistrate directing otherwise with the further direction that, if necessary, in the interests of justice the wives may be permitted to lead further evidence in rebuttal of the evidence led by the husbands in support of their allegations of adultery. I understand that the 22nd of January, 1962, is already fixed for hearing in the lower court and, therefore there is no need for me to give any direction regarding a date on which the parties are to appear.

B.R.T.

