
(1967) 05 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revn No. 78-R of 1966

Jai Singh Balan Singh

APPELLANT

Vs

Mst. Nasib Kaur

RESPONDENT

Date of Decision: May 18, 1967

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 488(3)

Citation: AIR 1968 P&H 272 : (1968) CriLJ 796

Hon'ble Judges: Mehar Singh, C.J

Bench: Single Bench

Advocate: B.S. Shant and Ashir B.S. Dhillon, for the Appellant; J.S. Mavi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. An application was made by the wife Nasib Kaur on her own behalf and on behalf of her minor son Gurjant Singh u/s 488 of the Code of Criminal Procedure against her husband Jai Singh for grant of maintenance allowance at the rate of Rs. 200 per mensem. There is a daughter of the parties named Jagdish Kaur but no maintenance allowance was claimed in the application on her behalf. The learned Sessions Judge now reports that that was because the daughter was living with her father and was being maintained by him. The learned counsel for Jai Singh points out that as much as stated in the main application under Section 488 of the Code of Criminal Procedure

2. There was a compromise between the husband and the wife in that application during its pendency and the terms of the compromise were that the husband Jai Singh was to transfer 3/11th share of his land in villages Chughe Kalan and Phulle Mithi to his wife Nasib Kaur, his minor son Gurjant Singh and his daughter Jagdish Kaur in equal shares within two months obviously of the date of the compromise and it was further agreed that in the event of his failure to do so he was to pay Rs.

150 per mensem as maintenance allowance to those persons. The maintenance order was to be executed only if no transfer of the land was made by the husband. He did not transfer the land according to the compromise. On that the wife Nasib Kaur made an application on her behalf and on behalf of her minor son Gurjant Singh for execution of the order of maintenance according to Sub-section (3) of Section 488 of the Code of Criminal Procedure, and recovery of an amount of Rs. 360. On that the husband Jai Singh, filed a revision application before the Sessions Judge of Bhatinda that the conditional order of maintenance was not executable and in any case, it was not a legal order.

This has prevailed with the learned Judge, who has made a reference dated June 18, 1966 that the order of maintenance jointly in favour of the wife the minor son and the daughter, be held as invalid and inexecutable. The reasons given by the learned Judge in support of his opinion are (a) that the daughter Jagdish Kaur was not a party to the proceedings u/s 488 of the Code of Criminal Procedure and no maintenance had been claimed on her behalf or indeed could be claimed on her behalf because her father never refused to maintain her (b) that, in the circumstances, no order of maintenance under the said section could be passed in her favour (c) that the order of maintenance was made in favour of three persons jointly without specifying their shares, and on that ground was not valid, and (d) that the order of maintenance as such, being a conditional order for payment of maintenance allowance in terms of the compromise between the parties, was outside the purview of the said provision.

3. In so far as the question of the apportionment of the shares in the amount of the maintenance allowance is concerned, that presents no difficulty because the Magistrate passing the order while accepting the compromise said that the land was to be transferred in the name of the three in equal shares, from which a conclusion is obvious that if the land was not transferred and maintenance allowance was to be paid in cash, each of the persons to whom such an allowance was allowed was obviously to share the amount in the same ratio in which he or she was to share the land. So each one of the three was to share the amount of the maintenance allowance equally in other words each one was to get 1/3rd of the total amount of Rs. 150. If as appears to be a fact there was no claim for maintenance allowance on behalf of the daughter Jagdish Kaur then to that extent the order of the Magistrate, based on the voluntary statement of the father that he would have also given maintenance allowance to his daughter, can obviously be treated as superfluous and not affecting the right to maintenance by the wife and the minor son.

These two considerations which weighed with the learned Judge present no difficulty. This also meets the approach of the learned Judges that the daughter Jagdish Kaur not being a party to the maintenance application is a ground for refusal to execute the order in question. So far as the father agreed voluntarily to

give maintenance amount to her that as stated may be ignored as superfluous. Such a voluntary agreement on his part will not defeat the claim of the wife and the minor son who on the terms of the compromise must have taken not to have been maintained by him, for otherwise he would never have submitted to the making of the maintenance order against himself. There remains for consideration only one other ground which prevailed with learned Judge, that is to say whether the maintenance order is conditional in the sense that the husband Jai Singh had first the alternative to give maintenance by transferring the land and failing that, secondly, he was to become liable to pay maintenance in cash.

The question is whether this is such a condition as renders the order of maintenance passed in favour of the wife and the minor son by the Magistrate invalid or illegal? Apparently, in the present case, what has happened is that the husband admitted, in substance, the claim for maintenance by the wife and the minor son and hence entered into a compromise with them agreeing to provide maintenance to them. This was accepted by the Magistrate and in law, he could make an order of maintenance on the basis of such an admission by the husband. It is said that the order is conditional and hence not valid. The learned counsel for the husband refers to *Roshan Bano v. Azim* AIR 1943 Lah 59 but that case on facts has no bearing because there the husband and wife had agreed to live together and the condition only attached to the question of the husband providing a separate residence to his wife or in the alternative maintenance in cash. The fact that they agreed to live together settled the application for maintenance.

The second case to which reference has been made by the learned counsel in this respect is *Govindram Narandas v. Ratanbai Nathuram*, AIR 1956 Sau 105, but that was a case in which there was already a compromise entered into between the husband and the wife providing for separate maintenance in case the wife and the husband did not agree and she wished to live separate from him. All that the learned Judges held was that she must enforce that compromise and could not claim, without enforcing that compromise, maintenance allowance u/s 488 of the Code of Criminal Procedure. These two cases do not advance this argument. I do not find that any of the cases referred to in the referring order of the learned Judge supports this argument so far as the facts of the present case are concerned. What has happened in the present case is that the husband having accepted his liability to maintain his wife and minor son, he agreed to give land to them in place of being bothered to pay monthly cash amount to them and he agreed that if he failed to do so, according to the terms of the compromise, the order of maintenance was to be executed against him for the amount stated in the order. The argument on the side of the husband turns to this that the wife and the minor son must first enforce that part of the compromise to make him transfer the land to them and only if they fail in that that they can further claim cash maintenance allowance. The trial Magistrate allowed the facility to the husband to meet the maintenance claim of the wife and the minor son by transferring the land, but if he did not so the order of the

Magistrate is clear that he was to pay cash amount as maintenance allowance to both. Suppose the Magistrate instead of passing the final order in the terms of the compromise, as he did had adjourned the case giving time to the husband to transfer the land and the husband had failed to do so and thereafter the Magistrate had proceeded to pass order for the cash monthly amount in the terms of the compromise, no possible exception could be taken to such an order on the ground that it is invalid and I do not see that the position at present is anywise different.

In my opinion, the order of maintenance, in favour of the wife and the minor son in this case is not invalid or illegal simply because the trial Magistrate allowed facility to the husband to meet the maintenance claim of the wife and the minor son in a particular manner before the order could take the executable shape as being executable for an amount of Rs. 50/- in favour of each. In this approach the reference made by the learned Judge is only partly accepted and it is otherwise declined. It is partly accepted so far as the maintenance allowance has reference to the daughter, Jagdish Kaur, but it is declined so far as the maintenance order gave cash maintenance of Rs. 50/- each to the wife, Nasib Kaur, and the minor son Gurjant Singh. The order is executable so far as they are concerned for an amount of Rs 50/- per mensem in the case of each.