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**(1949) 08 P&H CK 0004**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Gurnam Singh

APPELLANT

Vs

Mt. Datto

RESPONDENT

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**Date of Decision:** Aug. 20, 1949

**Acts Referred:**

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

**Citation:** AIR 1950 P&H 20 : (1950) CriLJ 390

**Hon'ble Judges:** Harnam Singh, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

Harnam Singh J.

Shrimati Datto applied u/s 458, Criminal P.C. claiming maintenance from her husband Gurnam Singh on the ground that having sufficient means he had neglected and refused to maintain her and her children from him. The trial Court has allowed Rs. 40 per month to Mt. Datto and Rs. 8 per month to the children on account of maintenance.

2. It appears that the petition was put in by Mt. Datto on 23rd December 1947. Notice was ordered to be issued to the respondent Gurnam Singh for 14th January 1948, both in the ordinary way and by registered post. The said notices were not received after service. Fresh notices were then ordered to be issued for the service of Gurnam Singh respondent for 30th January 1948. Again the notices were not received after service. Notices were again ordered to be issued for 9th February 1948. This time the registered envelope was received back with the endorsement "Refused", The case was then proceeded ex parte against the respondent within the meaning of the proviso to Sub-section (6) of Section 488, Criminal P.C. and the case was adjourned to 20th February 1948. Evidence was, however, recorded on 2nd March 1948. Thereafter there were three adjournments so 8th March 1948, 22nd

March 1918 and Slat March 1948 foe arguments and orders. On 31st March 1948 Gurnatn Singh respondent appeared in the trial Court and applied for the setting aside of the ex parte proceedings taken against him on the ground that he had not been duly served with notice of the proceedings. The case was adjourn, so to 6th April 1948 when Me. N. B. Kalia by his order of that date held that the respondent was duly served and had wilfully absented him-self and he allowed the petition for the award of maintenance to the extent stated above,

3. Against the order of the Magistrate Gurnam Singh respondent went up on revision to the Additional Sessions Judge, Amritsar. The Additional Sessions Judge has found that there was no sufficient ground for action u/s 439, Criminal P.C. The learned Additional Seasions Judge has held that Gurnain Singh had full knowledge of the application and that "he wilfully absented himself with the object of pro-longiag the case unnecessarily and thus to harass Mfc. Datto," Gurnam Singh has come up to this Court in revision.

4. The sole point argued before me by Mr. B. D, Mehra was that the respondent was not duly served in proceedings u/s 488, Criminal P.C. He urges that there is no provision in the Criminal Procedure Code for the service of a respondent u/s 488, Criminal P.C. by registered post. He relies in this connection on Section 68 of the Code which provides:

(1) Every summons issued by a Court under this Cods shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer ti8 the High Court may from time to time, by rule, direct,

(2) Such summons shall be served by a police officer, or subject to such rules its the Provincial Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

Now, Section 68,Criminal P, O., corresponds to SSection 152 and 163, Criminal P.C. 1872. Sections 152 and 153 of the old Code were limited to the form of summons issued against accused persons only. Section 68 of the present Code, however, applies to summons to accused as well as other persons and enacts the jorum which all such summonses should be issued, Sections 69 to 73, Criminal P.C. deal with the manner of service of summons. The proof of service is dealt with by Section 74.

5. An examination of Sections 69 to 73 of the Code shows that wherever practicable a summons should be served personally on the person to be summoned. When such person cannot, by the exercise of due diligence, be found, it should be served on an adult male member of the family. If service cannot, after the exercise of due diligence, be effected in the manner prescribed by Sections 69 and 70, a duplicate of the summons should be affixed to a conspicuous part of the house or homestead in which the person summoned ordinarily resides. Section 72 deals with service of summons on servants of Crown or of Eailway Company, and Section 73 which was first introduced by Act ho. IV [4] of 1877 deals with service of summons outside the

local limits of the jurisdiction of a Court issuing such summons.

6. It would appear that all summonses issued under Criminal P.C. 1898 shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons in the form prescribed by sch. V of the Code. There was no provision for service by registered post letter in the Codes of 1861, 1872 and 1882. Sub-section (3) of Section 69, which was newly added in the Code of 1898, provides;

Service of a summons on an incorporated Company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the Chief Officer of the corporation in British India, In such case the summons shall be deemed to have been effected when the letter would arrive in the ordinary course of post.

This would show that service by registered post on a person summoned in proceedings under the Code of Criminal Procedure, is permissible only in the case of an incorporated company or other body corporate and in no other case.

7. A similar point arose in *Gharan Das v. Firm Puranlal Govind Pershad* AIR 1929 Lab. 235 : 116 Ind.Cas. 620. In that case Tek Chand J. said :

The refusal of respondents to receive the summons sent by registered post for attendance on 31st July 1924, did not amount to "non-service" under the law then in force.

This was so because the proviso to O. 5, Rule 10, Civil P.C., authorising service by registered post was added for the first time by the High Court of Judicature at Lahore on 24th November 1947. Again in *Sarat Chandra Ray Choudhary, 1 c. W. N. case*, it was held that a summons sent by registered post is invalid as not being in accordance with Section 68, Criminal P.C., and a disobedience of such a summons is not an offence.

8. Mr. Rup Chand, however, contends that the person proceeded against u/s 488, Criminal P.C. is not an accused person. That is so and the same is made clear by the amendment made in the year 1923 with reference to sub-ss. (7) and (9) of the old section. The proceedings u/s 488, however, are judicial proceedings of a criminal Court and are governed by the Code.

9. As stated above Section 88 of the Code applies to summons to accused as well as persons summoned in proceedings under the Code and that being so summons issued in proceedings u/s 488, must be served by a police officer, or subject to such rules as the Provincial Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant. The service of summons by registered post letter on the person proceeded against u/s 488, is not in any case permitted.

10. Now, the direction in Sub-section (6) of Section 488, is peremptory that all evidence under Chap. XXXVI of the Code shall be recorded in the presence of the husband or father, as the case may be, or when his personal attendance is dispensed with, in the presence of his pleader and the Magistrate Cannot proceed to hear the case ex parte except on being satisfied that the respondent has either willfully avoided service of summons or has willfully neglected to attend the hearing. In this case there is no proof of wilful avoidance of service or wilful neglect to attend the Court; on the other hand the madatory rules of procedure relating to the form and service of summons have not been observed,

11. For the reasons given above I cacoethes petition, set aside the order of the Magistrate and send the case back to the Court below for disposal in accordance with law.

12. The parties are directed to appear in the Court below on 11th February 1949.