

**(1964) 10 AHC CK 0013**

**Allahabad High Court**

**Case No:** Criminal Ref. No. 379 of 1963

Ishwar Singh

APPELLANT

Vs

Smt. Hukam Kaur

RESPONDENT

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**Date of Decision:** Oct. 6, 1964

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 488
- Hindu Marriage Act, 1955 - Section 13, 15(1), 25

**Citation:** AIR 1965 All 464 : (1965) CriLJ 449

**Hon'ble Judges:** H.C.P. Tripathi, J

**Bench:** Single Bench

**Advocate:** Sant Prakash and Prabodh Gour, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

H.C.P. Tripathi, J.

The opposite party Smt. Hukam Kaur filed an application u/s 488, Criminal P. C. against the applicant on the allegations that the applicant was her husband, that he was neglecting her and that she was entitled to get a monthly allowance from him for maintenance. The applicant denied to have married the opposite party. Parties led evidence and the learned Magistrate held that the marriage of the applicant with the opposite party has been established, that the applicant was neglecting the opposite party and, therefore, he was liable to pay her a maintenance at the rate of Rs. 15/- per month. On revision the learned Sessions Judge has referred the case with a recommendation that the order passed by the Magistrate be set aside, because, admittedly the opposite party's previous husband Brahma Pal was alive and, therefore, there could be no legal marriage between the opposite party and the applicant entitling the opposite party to receive any maintenance.

2. I have heard the learned counsel for the applicant. None appears on behalf of the opposite party.

3. The order of the Magistrate shows that the case of the opposite party was that her previous husband Brahma Pal who was alive had severed all his connections with the lady and had allowed her to marry any person she liked because of his ill health. Brahma Pal has not been examined in the case and, therefore, it is difficult to believe that he would have allowed the opposite party to marry another person during his lifetime. Even if the opposite party's allegations are held to be true, it is difficult to hold that that will amount to a divorce within the meaning of Section 13 of the Hindu Marriage Act, 1955 because a divorce which could result in the dissolution of a solemnized marriage has to be obtained by one of the two parties on presentation of a petition from a competent Court. So long as such a divorce has not been obtained, the previous marriage subsists and, therefore, the second marriage cannot be contracted by a Hindu so long his spouse is living. S. 5 of the Hindu Marriage Act provides that a marriage may be solemnized between any two Hindus, if neither party has a spouse living at the time of the marriage. In the instant case, the previous husband of the opposite party is still alive and, therefore a second marriage with the applicant even if it is held to have taken effect was wholly illegal and cannot give her any right to get a maintenance from the applicant.

4. The reference made by the learned Sessions Judge is accepted and the order of the Magistrate directing the applicant to pay Rs. 15/- per month as maintenance to the opposite party is set aside.