

## Babu Lal Kurmi Khalasi Vs Shanti Bai

**Court:** Madhya Pradesh High Court

**Date of Decision:** July 25, 1955

**Acts Referred:** Criminal Procedure Code, 1898 (CrPC) â€” Section 488, 488(6)

**Hon'ble Judges:** Jagat Narayan, J.C.

**Bench:** Single Bench

**Advocate:** Hanuman Prasad, for the Appellant; Maheshwari Prasad, Government Advocate, for the State, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

Jagat Narayan, J.C.

1. This is a reference by the Additional Sessions Judge, Umari, under S. 488, Cr. P. C., recommending that the amount of maintenance allowed

by the Magistrate be reduced. The reference has been made on the application of Baboolal. Smt. Shanti Bai on whose application the proceedings

were started did not appear in spite of notice. I have heard the Learned Counsel for the applicant and the learned Government Advocate and have

perused the record.

2. On behalf of the applicant it was urged before me relying on "Rupchand Issardas v. Emperor", 1942 Sind 32 (AIR V29) (A) that the order

passed by the Magistrate is bad as it is based on evidence which was recorded in contravention of the provision contained in sub-section (6) of S.

488, Cr. P. C. That sub-section runs as follows:

All evidence under this Chapter shall be taken 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 shall be recorded in the manner prescribed in the case of summons-cases.

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to

hear and determine the case "ex parte". Any orders so made may be set aside for good cause shown on application made within three months

from the date thereof.

2-11-1954 was fixed for final hearing. On that date Babulal was absent but his pleader was present. The evidence of the witnesses of Smt. Shanti

Bai was recorded on that date in the presence of the pleader who cross-examined these witnesses. There is nothing on record to indicate that the

personal attendance of Babulal had been dispensed with by the Magistrate.

3. But no prejudice was caused to the applicant by the mere fact that he was not present on 2-11-1954. He must have instructed his pleader to

appear for him in his absence. The pleader actually cross-examined the witnesses and it is not alleged that he did not have previous instructions

from his client about the matter, to enable him to discharge his duties properly. On 30-12-1954 when one defence witness was examined on behalf

of Babulal, the latter was not present and it was his pleader who examined him. On 29-1-1955 neither Babulal nor his pleader appeared and the

present order was made ex parte on the basis of evidence already recorded. It has not been alleged that Babulal had any reason for not appearing

on 29-1-1955. I accordingly find that by the failure to conform to the provisions of sub-section (6) no prejudice was caused to the applicant and I

accordingly decline to interfere on this ground in revision.

4. The facts of 1942 Sind 32 (AIR V 29) (A) were peculiar. After a number of adjournments the case was disposed of on 4th May. On that date,

the parties were not present, but one Mr. Balchand, one of the partners in the firm of advocates briefed by the applicant filed a written statement

denying the liability to pay maintenance and disputing the amount claimed. What exactly happened at the hearing was not very clear from the

record. The evidence of one witness on behalf of the wife was taken and the Magistrate passed an order stating that there was no dispute about

the liability to pay maintenance and that this liability was conceded in fact by Mr. Balchand advocate.

5. Next it was argued that the amount of maintenance ordered was excessive. The applicant receives Rs. 40/- as pay and Rs. 30/- as dearness

allowance. Besides that he earns some additional remuneration for working overtime and has some income from cultivation. The exact extent of the

income from these sources is not known. It has come in evidence that besides his wife and daughter Babulal has to maintain his father and mother

also. In the circumstances, the learned Additional Sessions Judge has recommended that the amount of maintenance granted to Smt. Shanti Bai be

reduced from Rs. 30/- to Rs. 15/- & that granted to her daughter may be reduced from Rs. 15/- to Rs. 10/-. I reduce the maintenance granted to

Smt. Shanti Bai from Rs. 30/- to Rs. 20/- and that of her daughter from Rs. 15/- to Rs. 10/-. With this modification the reference is accepted.