

CRIMINAL REVISION.

Before Mr. Justice E Maung.

MAUNG HLA BAW (PHAW) (APPLICANT)

v.

MA OH ZA (RESPONDENT).*

1947

Sept. 15.

Criminal Procedure Code, s. 490—Effect of re-union of husband and wife upon an order for maintenance.

A wife had an order for maintenance : subsequently there was a re-union of the husband and wife. The wife asked for execution of the order for maintenance up to re-union.

Held : That she was entitled to the same. The order for maintenance may remain in suspension for the period during which they live together and during such period the husband may apply to have the order cancelled under s. 488 (5) or 489, Criminal Procedure Code.

Judgment of Doyle J., 8 Ran. 460, doubted.

Kanagammial v. Pandara Nadar, 50 Mad. 663 ; *Pearey Lal v. Naraini*, 58 All. 379 ; *Coelho v. Coelho*, (1937) Nag. 230, followed.

E MAUNG, J.—I cannot accept the recommendation of the District Magistrate of Kyaukpyu in his Criminal Revision No. 63 of 1947.

It is true that in *U Po Shein v. Ma Sein Mya* (1) Doyle J. at page 462 of the report has said that the re-union of the husband and the wife after the making of an order of maintenance must be interpreted as removing the basis on which the order of the Magistrate rests and as therefore vacating the order. But this decision, even if it is correct, does not go to the extent of denying the wife the arrears of maintenance that had accrued to her before the re-union. The vacation of the order, if there can be a vacation at all, by a mere re-union between the husband and the wife would take effect only as from the date of the re-union. The rights

* Criminal Revision No. 169B of 1947 being a review of the order of the Township Magistrate, Kyaukpyu, in Criminal Misc. No. 5 of 1947.

(1) 8 Ran. 460.

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under the order prior to that date, which till that date was in force, cannot be taken away in the absence of any express provision in the Code of Criminal Procedure.

It is not necessary for me, in this case, to pursue the matter of the effect of a re-union between the husband and the wife on an order of maintenance made prior to such re-union. I shall not therefore refer this matter to a Bench to have the correctness of Doyle J.'s decision tested. I must, however, say that, in my opinion and speaking with the greatest respect to Doyle J., there is a great deal to be said for the contrary view. The decisions in *Kanagammal v. Pandara Nadar* (1), *Pearey Lal v. Naraini* (2) and *Coelho v. Coelho* (3) should, in my opinion, be followed. As has been said in the Allahabad case, the order of maintenance may remain in suspension for the period during which the husband and the wife, after the re-union, live together and that during the period of suspension the husband may apply to have the order cancelled under section 488 (5) or section 489 of the Code of Criminal Procedure. If it is not so cancelled and if the re-union should turn out to be a failure and the wife is turned out again, I do not see why she should not take advantage of an order made by a competent Court which has not been set aside in due process of law.

In this case, the sum which is claimed by the wife, who is the respondent before me, is the sum which had accrued due before the re-union of the husband and the wife. I cannot also overlook the fact that when the applicant Maung Hla Baw appeared before the Township Magistrate on the 19th May 1947 he promised to pay Rs. 60 on the 3rd June 1947. It was only on the latter date that he changed his mind and stated his

(1) 50 Mad. 663.

(2) 58 All. 379.

(3) (1937) Nag. 230.

intention to apply to the District Magistrate, Kyaukpyu, in revision.

I accordingly reject the recommendation of the District Magistrate, Kyaukpyu, and uphold the order of the Township Magistrate, Kyaukpyu.

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