

person by any order made in the appeal, a duty arises according to the principles of natural justice to give notice to the persons affected."

The Bharat
Wafadar
Motor
Transport Co.,
Ltd.

Accordingly I accept this petition and quash the order of the Appellate Authority dated the 26th of August, 1955. The result is that the appeal of Brahm Dutt, etc., remains pending before the Appellate Authority and it can take any action that is considered fit and proper on this appeal. The respondents shall pay the costs of the petitioning Company which I assess at Rs. 100.

v.
The Chief
Commissioner,
Delhi
State and
others
Bishan Narain,
J.

REVISIONAL CRIMINAL

Before Falshaw and Kapur, JJ.

SARDARI LAL,—*Petitioner*

versus

Mst. KAUSHALYA DEVI,—*Respondent*

Criminal Revision No. 378 of 1956.

Code of Criminal Procedure (Act V of 1898)—Sections 488 and 531—Jurisdiction—Place of temporary residence—Whether within the meaning of word "resides" in section 488, Criminal Procedure Code—Order of Criminal Court—When can be set aside merely on the ground of Jurisdiction—Rule stated.

1956
Sept. 13th

Husband belonged to Pakistan and on the partition of the country, came to India and lived in a village in Amritsar District with his wife. Being an employee of the Defence Department he was stationed in Meerut. The wife brought the application for maintenance in Amritsar. The question raised was as to the jurisdiction of the Amritsar Court to take cognizance of the case.

Held, that if the wife was residing in the village where the husband was visiting her, it cannot be said that he did

not reside with his wife in the village. The house where the wife was residing must be taken to be the marital home and it is not impossible for a person to have more than one dwelling place. Even a place of temporary residence is within the meaning of the word "resides", though, however, it is true that "resides" implies something more than a mere brief or flying visit.

Held further, that under section 531, Criminal Procedure Code no order of any Criminal Court can be set aside merely on the ground of jurisdiction as to the place of enquiry or trial, unless it appears that an error as to jurisdiction has resulted in the failure of justice.

Sophia Orde v. Alexander Skinner (1), followed, *Sita Ram Kalwar v. Sukhia Kalwarin* (2), referred to.

(Case referred to Division Bench by the Hon'ble Mr. Justice Kapur, on 2nd June, 1956, for decision of the case.)

Petition under sections 435/439 of Criminal Procedure Code for revision of the order of Shri Tara Chand Gupta, Sessions Judge, Amritsar, dated the 7th December, 1955, affirming that of Shri Kulwant Singh, Magistrate, 1st Class, Amritsar, dated the 12th September, 1955, ordering the petitioner to pay Mst. Kaushalya Devi, an allowance of Rs. 45 per month for her and for her son from the date of order. Proceedings under section 488, Criminal Procedure Code.

H. S. GUJRAL, for Petitioner.

G. C. SHARMA, for Respondent.

ORDER

Kapur, J.

KAPUR, J. This is a rule obtained against an order made by Mr. Kulwant Singh, Magistrate, 1st Class, Amritsar, allowing to the wife an allowance of Rs. 45 per mensem as maintenance for her and for her son under section 488, Criminal Procedure Code.

(1) I.L.R. 3 All. 91.

(2) A.I.R. 1939 Cal. 336.

The sole question before me is one of jurisdiction. The husband, it is agreed before me, belonged to some place in Pakistan and on the partition of the country he came to what is now India and for some time he lived in Baserke, a village in Amritsar District, with his wife. He is employed in some Defence Department and was, when the present petition was brought, stationed at Meerut. The wife brought the application for maintenance in a Court in Amritsar, and the sole question raised then was, as it now is, as to whether the Amritsar Court has jurisdiction to take cognizance of this case.

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Under section 488(8), Criminal Procedure Code, proceedings under this section can be taken in any district where the husband resides or he and his wife last resided together. The question as to what is the meaning of the words "last resided together" was decided by a judgment of the Lahore High Court in *Charan Dass v. Mt. Sarsti Bai* (1), where it was held that a temporary residence is not within the meaning of the words "last resided together."

Counsel for the respondent, the wife, relies on section 531 of the Criminal Procedure Code and in support has quoted *Sitaram Kalwar v. Sukhia Kalwarin* (2), where it was held that merely because the case was brought in the district of 24 Parganas while the husband and wife last resided together in Calcutta is not a ground for setting aside the order as it would be covered by section 531 of the Criminal Procedure Code.

Counsel also relies upon a judgment of the Rangoon High Court in *Maung Paik v. Ma Ohn Sint* (3), where in circumstances similar to the last case

(1) A.I.R. 1940 Lah. 449.

(2) A.I.R. 1929 Cal. 336.

(3) A.I.R. 1939 Rang. 210.

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section 531 of the Criminal Procedure Code was applied. Ramaswami, J., in *Sampooram v. N. Sunderesan* (1), held that where parties have no home of any sort and have been moving about from place to place, each place where they do live would be their home for the time being and the Court within whose jurisdiction they resided last can entertain that application. The learned Judge referred to the Lahore case and was of the opinion that subsection (8) of section 488 does not apply to a permanent residence.

The petitioner has referred me to a Single Bench Judgment of this court in Criminal Revision No. 779 of 1955, in which it was held that section 531 of the Criminal Procedure Code cures all defects of jurisdiction unless failure of justice is proved. The question, in my opinion, is of some importance because it is liable to all kinds of abuse. Examples of this kind can be multiplied and I think it is in the interests of justice if this matter was decided by a Division Bench so as to put an end to all controversies. I would, therefore, direct that the papers be sent to the Hon'ble the Chief Justice to constitute a Bench.

JUDGMENT

Kapur, J. KAPUR, J. This was a case referred by me to a Division Bench to decide as to the effect of section 531 of the Criminal Procedure Code.

The wife Kaushalya Devi brought an application under section 488 of the Criminal Procedure Code against her husband and claimed maintenance. She alleged that after the partition of the country she and her husband lived in village Mahal and then in village Bhaini Basarke in District Amritsar, where her parents were also residing, but they did so in a separate house of their own and she gave birth to a son there. The

(1) A.I.R. 1953 Mad. 78

father as a witness stated that the respondent, i.e., the husband, was employed in Meerut and that the girl was in the village but whenever the husband could, he used to come and stay in the village with his wife during the holidays. No doubt, the wife stated that **she** went to live with the husband in Meerut and was residing in the village at the time the application was made, but that is not conclusive in order to decide the meaning of the words "where he last resided with his wife."

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If the wife was residing in the village in the house where the husband was visiting her, it cannot be said that he did not reside with his wife in the village. The house where the wife was residing in this particular case must be taken to be the marital house and it is not impossible for a person to have more than one dwelling place see *Sophia Orde v. Alexander Skinner*, (1). Even a place of temporary residence is within the meaning of the word "resides". It is true that "resides" implies something more than a mere brief or flying visit but in this case the wife was residing in the village and the husband who was employed outside, i.e., in Meerut, used to come to the village and the husband and the wife lived together as such. In my opinion, that would amount to "resides" within the meaning of the words as used in section 488 of the Criminal Procedure Code.

And even if they did not, section 531 of the Criminal Procedure Code would be a complete answer to the case set up by the petitioner. The section runs as follows :—

"No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other

(1) I.L.R. 3 All. 91.

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proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

It is not shown that there is any prejudice. In *Sitram Kalwar v. Sukia Kalwarin* (1), it was held that merely because the case was brought in the district of 24 Parganas while the husband and wife last resided together in Calcutta is not a ground for setting aside the order as it would come within section 531 of the Criminal Procedure Code, and the same view was taken in *Maung Paik v. Ma Ohn Sint* (2), in circumstances which were similar to those in *Sitram Kalwar's* (1), case.

In a Single Bench judgment of Bhandari, C.J., in *Mehnga Mal v. Raj Kumari* (3), the same view was taken in a matter under section 488 which was an identical case in circumstances as the one in the present case and it was held that under section 531, Criminal Procedure Code, no order of any Criminal Court can be set aside merely on the ground of jurisdiction as to the place of enquiry or trial unless it appears that an error as to jurisdiction has resulted in failure of justice.

The petitioner has submitted that the amount claimed is excessive. I am unable to agree with this submission. He is receiving Rs. 120 and his wife and a child have been given a maintenance of Rs. 45 a month. I would, therefore, dismiss this petition and discharge the rule.

Falshaw, J.

FALSHAW, J. I agree.

(1) A.I.R. 1929 Cal. 336
 (2) A.I.R. 1939 Rang. 210
 (3) Cr. 779 of 1955