

Present: Akbar J.

1929.

FERNANDO v. FERNANDO.

168—P. C. Colombo, 13,948.

*Maintenance—Action by husband—Inability to maintain—Married Women's Property Ordinance, No. 18 of 1923, s. 26.*

Where the husband of a married woman was unable to secure employment owing to the suspension of his certificate of conformity as an insolvent,—

Held, that he was not entitled to apply for maintenance from his wife under section 26 of the Married Women's Property Ordinance.

**A** PPEAL from an order of the Police Magistrate of Colombo.

*Rajapakse*, for appelland.

*Weerasooria*, for respondent.

April 29, 1929. AKBAR J.—

This is an appeal by the applicant-appelland, who is the husband of the respondent, from the order of the Additional Police Magistrate dismissing his claim for maintenance made under section 26 of the Married Women's Property Ordinance, No. 18 of 1923. Section 26 is as follows:—"When a married woman having sufficient separate property neglects or refuses to maintain her husband, who, through illness or otherwise, is unable to maintain himself, the Police Magistrate, within whose jurisdiction such woman resides, may, upon the application of the husband, make and enforce such order against her for the maintenance of her husband out of such separate property as, by the third section of the Maintenance Ordinance, 1889, he may now make and enforce against a husband for the maintenance of his wife." The important words in the section are "who through illness or otherwise is unable to maintain himself." Unlike the corresponding section in the Maintenance Ordinance relating to deserted wives (see section 3 of Ordinance No. 19 of 1889), the applicant cannot succeed in such an application, unless he proves that he is unable to maintain himself "through illness or otherwise."

The Police Magistrate has held strongly against the applicant on the facts in this case and I see no reason to disagree with his findings. The evidence of the respondent makes pathetic reading. She says she was married on October 3, 1922, and that it was a love match, against the wishes of her parents, but by December the same year disillusionment came and she then "perceived she had dreamed a dream."

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The Police Magistrate has held that the applicant tricked his wife with regard to Rs. 10,000, which the respondent gave him to deposit in her name in the P. and O. Bank. He deposited only Rs. 1,000 in her name and the balance Rs. 9,000 was squandered by him. He kept his wife's pass book for the Rs. 1,000 to allay suspicion. Later, when he had run through the Rs. 9,000, he stole an engagement ring, which he had bought with her money and given her, and pawned it. It was only after some time that she discovered the pawn ticket which revealed the theft of the ring by her husband. Then this unfortunate woman was pestered by her husband, who went to the extent of threatening to commit suicide. He denied that he so threatened, but when confronted with two letters he reluctantly admitted it, perhaps because he was ashamed that he was still alive.

He explained in the course of his evidence, for the first time, that his threats were due to the fact that he had discovered that his wife had immoral relations with the chauffeur. That this allegation is untrue is proved from the circumstance that he never made this charge against his wife when he brought matters to the notice of the Roman Catholic authorities when his wife left him in 1922.

The applicant is an undischarged bankrupt, and his certificate was suspended for two years on April 4, 1927. The only evidence he offered to prove that he was unable to maintain himself was the suggestion that he had not been able to secure a suitable employment owing to the suspension of his certificate of conformity. All this evidence of his character is material to show how far he is to be believed when he says that he was unable to find employment.

I agree with the finding of the Police Magistrate that he has made no attempt to find employment and that his object in making his application was not only to get a pension from his wife's property to enable him to live in idleness but also to cast as much mud on her character as possible. To my mind this is a sordid and frivolous application, and I agree with the Police Magistrate on all the findings of fact he has made in this case.

The evidence also shows that he sent a letter of demand to his father-in-law claiming rents already recovered by him in respect of his daughter's property during her minority. Just after the marriage the applicant took three months' advance rent from his wife's tenant, and the respondent actually filed a case against the tenant and the applicant for the recovery of this money.

I think I have indicated enough to show that the applicant is not entitled to any relief. I would, therefore, dismiss the appeal with costs.

*Dismissed.*