

Present : Akbar J.

1929.

KADIRAVAIL WADIVEL v. SANDANEM

44—P. C. Chilaw, 17,629

Maintenance—Parties living together after an order for maintenance—Cancellation of order—Application for enforcement of order.

A married woman obtained an order for maintenance against her husband. Thereafter the parties came before Court and had it recorded that they were living together. They separated again and the wife applied for the enforcement of the order of maintenance in her favour.

Held, that there had been no cancellation of the previous order and the Court was entitled to make an order for maintenance accordingly.

A PPEAL from an order of the Police Magistrate of Chilaw.

Wijewardena, for appellants.

Rajapakse, for respondent.

February 13, 1929. AKBAR J.—

The appellants are the husband of the respondent and he appeals from the order of the Police Magistrate dated December 1, 1928. In part I of this case the Court, on October 16, 1925, ordered the appellants to pay his wife the sum of Rs. 15 per month and there was an appeal from this order, but the appeal was dismissed. The appellants paid the maintenance for some time and then the parties came before Court and it was entered of record on March 6, 1926, that the appellants and the respondent were living together happily. The Police Magistrate remarked that he was pleased to put it on record. Thereafter the parties broke off again, and the respondent applied on October 27, 1928, for the enforcement of the order of maintenance, and in her petition mentioned the previous case. The appellants raised various legal objections, but the Police Magistrate declined to enter into the questions of law and made order for the payment of Rs. 45, being the cost of maintenance for three months on the admission of the appellants that he had not maintained his wife for three months under the original order in the case. It is now contended that because the parties lived together there is a cancellation of the order of October 16, 1925, that the Police Magistrate must treat this application as a new one, and that he had no jurisdiction to make the order he did in this matter.

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The point I have to decide is whether the Police Magistrate had jurisdiction to make the order in this case, or, in other words, whether there was a cancellation of the old order by the parties living together. It will be seen that the Maintenance Ordinance is self-contained, and once an order is made under section 3, the only way in which the order can be cancelled is indicated in section 6. Under that section the cancellation can only be granted upon proof that the wife is living in adultery, or that, without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent. It will be seen from the facts that I have narrated that there is no such cancellation of the original order. The fact that the Police Magistrate, on March 6, 1926, merely recorded that the parties were living together is not a cancellation of the order. It is, of course, open to the appellant to make such an application now, but I do not see how the appellant can contend, in the absence of a cancellation of the original order of maintenance, that the Police Magistrate had no jurisdiction to order the payment of the cost of maintenance on the uncanceled order.

I must, therefore, hold that the appellant has misconceived his legal remedy and that the appeal must be dismissed with costs.

Appeal dismissed.

