

A **MOHAMMED JAHAN**

v.

**HAZRA**

B [SUPREME COURT, 1964 (Hammett Ag. C.J.), 1st February, 17th April]

Appellate Jurisdiction

C *Husband and wife—matrimonial proceedings—maintenance order—no evidence called before magistrate—court may make order on admissions—Maintenance (Summary Jurisdiction) Ordinance (Cap. 31) s.6.*

D In maintenance proceedings under the Maintenance (Summary Jurisdiction) Ordinance the requirement in section 6 of the Ordinance that the court must be satisfied on the questions of the absence of condonation, connivance and collusion does not render it obligatory upon the court to hear evidence upon these matters if the facts alleged are admitted. A magistrate may “satisfy” himself by accepting and believing admissions made in court and drawing proper inferences from the material before him.

Appeal from order of a Magistrate’s Court under the Maintenance (Summary Jurisdiction) Ordinance.

E K. C. Ramrakha for the appellant.

The respondent did not appear and was unrepresented.

HAMMETT Ag. C.J.: [17th April, 1964]—

F The respondent wife lodged a complaint in the Court below on 17th June, 1963, that the appellant husband had, inter alia, been guilty of adultery with one Jaibun Nisah and applied for an order for maintenance under the Separation and Maintenance (Summary Jurisdiction) Ordinance.

At the hearing the husband appeared upon the complaint being read and said:

G “It is true I am keeping another woman but I am not prepared to pay any maintenance. I am prepared to take her (the wife) back.”

and to the Court’s question he said:

“Yes I am prepared to keep both women.”

H The learned trial Magistrate found the Appellant guilty of adultery not condoned by his wife and, after hearing evidence of means, ordered him to pay £1 per week maintenance to his wife.

The husband has appealed on the ground that the learned trial Magistrate erred in not hearing any evidence before making the order for maintenance. This ground of appeal directly contradicts the second ground of appeal that the verdict is unreasonable and cannot be supported having regard to the evidence. A

The only argument at the hearing of the appeal appeared to be directed to the contention that no order should be made under the Separation and Maintenance (Summary Jurisdiction) Ordinance upon admissions made by a husband respondent. This was said to be based on Section 6 of the Ordinance which reads: B

“On any application made either by a wife on the ground of adultery of her husband or by a husband on the ground of the adultery of his wife the court shall not make an order unless it is satisfied that the applicant has not condoned or connived at, or by her or his wilful neglect or misconduct conducted to, the adultery, and that the application is not made or prosecuted in collusion with the other party to the marriage or any person with whom it is alleged that adultery is committed.” C

There is nothing in this section that makes it obligatory on the Court to hear any evidence in these cases if the facts alleged are admitted. Where Section 6 requires a Magistrate to be “satisfied” of certain matters before he makes an order, it is open to him to satisfy himself upon such matters by accepting and believing the admissions made to him by a husband in Court or by drawing such inferences as it is proper for him to draw from the material before him. D

In this case it was open to the learned trial Magistrate to hold that the admitted adultery of the husband had not been condoned by the wife, firstly because she was in fact complaining of such adultery, which the husband admitted was continuing at the very date of the hearing and, secondly, because neither the husband himself nor his Counsel made any attempt to suggest that the husband’s continuing adultery had been condoned. Similar considerations apply to the issues of connivance and “conduct condoning”, neither of which were raised by the appellant in the Court below. E

In my opinion this appeal is devoid of merit and is, therefore, dismissed.

*Appeal dismissed.*