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*Present:* Jayewardene A.J.

1923

SIMO NONA *v.* MELIAS SINGHO.

455—P.C. Colombo, 12,361.

*Wife living in adultery before application for maintenance—Offer of wife to live with husband—Refusal of husband—Right to claim maintenance.*

Where a husband refuses to take back his wife, who is willing to live with him, she is entitled to maintenance, although she might have left her husband and lived in adultery some time prior to the application.

**T**HE facts are set out in the judgment.

*Savundranayagam* (with him *R. C. Fonseka*), for appellant in 455 and respondent in 455a.

*Soertsz*, for respondent in 455 and 1<sup>st</sup> appellant in 455a.

1923. September 12, 1923. JAYEWARDENE A.J.—

*Simo Nona  
v. Melias  
Singho*

In this case the appeal of the wife, who is the appellant in 455, is, in my opinion, entitled to succeed. The appellant applied for maintenance in respect of herself and two children. The learned Police Magistrate has rejected her claim, but has ordered maintenance in respect of one of the children, Edwin Sinno. He refused to make an order in respect of the other child, who has been proved to be over 14 years of age. The claim of the wife was resisted on the ground that she was living in adultery. The respondent stated that the applicant left him about seven or eight years ago with a Cochin man named Velu, and that at present she is living with a man called Marshall Appu. The fact that she went away some time ago with Velu is not very material, if she is not living with him now. He states that she is living with Marshall openly. To support his evidence on the point he called two of his sons and a sister-in-law of his. An independent witness was called, but he only spoke of the wife having lived with Velu. So that the evidence that the applicant is living in adultery with Marshall Appu is of interested witnesses. The learned Magistrate says that it is not likely that the respondent would have made up a false story like this and made his sons to give evidence in support of it. When children take sides in a case between their parents, they are prepared to go very far to support their side. In such circumstances, it is very easy to get children to give false evidence against the other parent, and there is no inherent probability that their evidence is true. Both the children are evidently living with the father, whose case they are called to support. They are under his influence. In fact, in cross-examination of the younger child, it transpired that he had never seen his mother living with Marshall Appu. He only heard people say so. In examination-in-chief he swore that his mother was living at present with Marshall Appu. The applicant gave evidence denying that she was living in adultery with Marshall Appu, and called several independent witnesses to support her case. The learned Police Magistrate does not find expressly that the applicant is living in adultery with Marshall Appu, but rejects her claim as he is inclined to believe that she has been living away from her husband for some years. He, however, finds that the husband has not proved that he has had no access to his wife, for he has allowed maintenance in respect of the child aged six months. In my opinion the respondent has failed to prove that the applicant is at present living in adultery. The parties are not living separately by mutual consent. The wife is prepared to live with her husband, but he refuses, as his counsel informed me, to take her back. She is, therefore, entitled to maintenance, although she may have left her husband and lived in adultery some time ago (*Reginakamy v. Johna*<sup>1</sup> and *Goonewardene v. Abeywickreme*<sup>2</sup>). The order in case

<sup>1</sup>(1914) 17 N. L. R. 376.

<sup>2</sup>(1914) 18 N. L. R. 69.

No. 455 is accordingly set aside. I send the case back for the Police Magistrate to award to the applicant such monthly sum as he thinks is sufficient for her maintenance. The appellant in 455 will get her costs. The appeal in 455a is dismissed, without costs.

1923.

JAYEWAR-  
DENE A.J.

*Simo Nona  
v. Melias  
Singh*

*Sent back.*

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