

Kochukrishnan Asan Vs. Rajan

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Court : Kerala

Decided On : Oct-19-1953

Reported in : 1954CriLJ625

Judge : T.K. Joseph, J.

Appellant : Kochukrishnan Asan

Respondent : Rajan

Judgement :

ORDER

T.K. Joseph, J.

1. This Criminal Revision Petition arises from proceedings under Section 488, Criminal P.C.

The petitioners in the court below were the wife and minor son of the counter-petitioner. The wife claimed maintenance on behalf of herself as well as on behalf of the minor child, on the ground that the husband was refusing to maintain them. The claim was disputed by the husband who contended that his wife had left him and was living in adultery, as a result of which she conceived and had an abortion.

After taking evidence, the learned Special First Class Magistrate of Trichur found that the wife was living in adultery and was not entitled to maintenance. However,

he ordered the husband to pay maintenance to the child at the rate of Rs. 7 per mensem from the date of the application viz., 12-7-1950. Aggrieved by this order the husband has preferred this criminal revision petition.

2. On behalf of the revision petitioner it was contended that his wife had voluntarily left his house, taking the child also with her. He did not dispute the paternity of the child. In fact when examined as C. P. W. 1 he stated that he was willing to maintain the child. The wife's lapse from virtue is not a ground for disallowing the maintenance to the child if the latter is actually living with his mother. The object of the section is to avoid vagrancy by providing that a Magistrate may up to a limited extent see that a wife and children are maintained by a husband or father able to maintain them. If in fact a child is living with its mother and the father is reluctant to maintain the child where it is living, the Magistrate has jurisdiction to make an order for maintenance.

It was argued that the child ought to be living with him and not with the mother. If that be so, his remedy is to take proper proceedings in a Civil Court to get the custody of the child. If the civil court makes an order under which the child ceases to reside with the mother and if the father is then willing to provide for its maintenance, he can apply to the Magistrate under Section 489 to modify his previous order. This is in accordance with the view held by Beaumont C. J., in - Ebrahim Mohammed v. Khurshedbai Ebrahim AIR 1541 Bom 267 (A). As it has been found by the learned Magistrate that the child is in fact living with its mother, the order granting maintenance to the child is proper.

3. It was next contended that the income of the husband is insufficient to provide maintenance at the rate of Rs. 7/- per mensem to the child. He is getting a sum of Rs. 42/- only per mensem, including dearness allowance. There is some substance in this point and I think the quantum of maintenance ordered requires modification. Accordingly I reduce the amount to Rs. 5/- per mensem. The Criminal Revision Petition is allowed to the above extent and is dismissed in other respects.