

Bhaskaran Vs. Kunhipennu

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Court : Kerala

Decided On : Sep-03-1959

Reported in : AIR1960Ker110

Judge : T.K. Joseph, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 488 and 489

Appeal No. : Criminal Revn. Petn. No. 207 of 1958

Appellant : Bhaskaran

Respondent : Kunhipennu

Advocate for Def. : K.P. Ramunny Menon and; P.G. Menon, Advs.

Advocate for Pet/Ap. : M.C. Sridharan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T.K. Joseph, J.

1. This criminal revision petition arises from an application under Section 488 of the Code of Criminal Procedure. The two petitioners in the court below a mother and child, applied for a maintenance order against the counter-petitioner in the

court below alleging that the latter was co-habiting with the first petitioner on the promise that he would marry her and that the second petitioner was born as a result of such union. The counter-petitioner denied the allegation in the petition. The court below hold that the counter-petitioner was the father of the child and accordingly ordered that he should pay maintenance to the child at the rate of Rs. 10 per month. The counter-petitioner has preferred this criminal revision petition from this order.

2. The main point urged on behalf of the petitioner is that there is no evidence corroborating the version of P.W. 1 and that in cases where the paternity of the child of an unmarried woman is denied, it is unsafe to act on the uncorroborated testimony of the woman. It has been pointed out in cases reported in *Vedanthachari v. Marie*, AIR 1926 Mad 1130; *Prasad Gareri v. Mt. Kesari*, 42 Cri LJ 347: (AIR 1941 Pat 444) and *Thakur Prasad v. Mt. Godavari Devi*, 52 Cri LJ 684: (AIR 1951 Pat 514), that the court should seek corroboration of the petitioner's evidence before granting maintenance. The learned Magistrate was of the opinion that the first petitioner's evidence was corroborated by that of the Village Adhikari P.W. 4. All that P.W. 4 stated was that when the first petitioner was about eight months advanced in pregnancy, she complained to him that she conceived as a result of living with the revision petitioner on his assurance that he would marry her.

This hardly amounts to corroboration in the sense in which the same is required. The other witnesses examined by the petitioners were disbelieved by the Magistrate. Ordinarily, in such cases, this court is reluctant to interfere with the conclusion reached by lower courts, but this is a case in which the Magistrate has clearly erred in assuming that P.W. 4 corroborated P.W. 1. As matters now stand, there is only the uncorroborated testimony of P.W. 1 to prove the paternity of the child. In these circumstances the order passed by the learned Magistrate cannot be supported.

3. The criminal revision petition is therefore allowed and the order awarding maintenance is set aside. The petition under Section 488 will stand dismissed.

