

Saraswati Vs. Madhavan

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Court : Kerala

Decided On : Dec-06-1960

Reported in : AIR1961Ker297; 1961CriLJ640

Judge : P. Govinda Menon, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 488(1)

Appeal No. : Criminal Revn. Petn. No. 170 of 1960

Appellant : Saraswati

Respondent : Madhavan

Advocate for Def. : M.S. Kurien,; R.G. Diaz and; K. Narayana Menon, Advs

Advocate for Pet/Ap. : T.V. Prabhakaran, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

P. Govinda Menon, J.

1. The only question raised in this petition is whether the word 'child' under Section 488, Cri. P. C., can apply to a person who has already attained the age of majority. The learned First Class Magistrate, Ernakulam disallowed the claim for

maintenance to the petitioner who is aged 22 years. According to the petitioner's learned counsel the word 'child' is not confined to minors, but the word is synonymous with sons or daughters of whatever age and that so long as that person was unable to maintain himself or herself, he Or she would be entitled to maintenance. It was pointed out that the reference to age has been purposely omitted in the section.

2. The decisions are not uniform. In *W. L. Faria v. Anita Merlene Faria*, AIR 1951 Gal 60, it was held that:

'The word 'child' in Section 488 (1) has been used simply to mean the son or the daughter without reference to the age. The deciding consideration is whether the child is or is not able to maintain himself or herself.'

Sm. Purnasashi Devi v. Nagendra Nath Bhattacharjee, AIR 1950 Cal 465 also took the same view.

3. But in an earlier Calcutta case in *Hemanta Kumar Banerjee v. Monorama Debi*, AIR 1935 Cal 488 it was observed:

'The word 'child' has not been defined in the Criminal Procedure Code. In the absence of any statutory definition or anything to the contrary to the Act, 'child' is a person who is incompetent to enter into any contract or to enforce any claim under the law. Under the Majority Act, a person who has not attained the age of majority, that is 18, is incompetent to contract and is therefore a child within the meaning of Section 488, Crl. P. C.'

4. The next case referred to by the learned counsel for the petitioner is the case in *Ahmad Shaikh v. Bai Fatma*, AIR 1943 Bom 48 where the question for decision was whether a daughter aged 21 was entitled to maintenance and whether Section 488 is confined to minors only. It was held that:

'In Section 488 Crl. P. C. the word 'child' is used with reference to the father. There is no qualification of age; the only qualification is that the child must be unable to maintain itself. Hence Section 488 is not confined to children who are under the age of majority.'

5. But in a later decision of the same High 'Court in Ranchhodas Narottamdas v. Emperor, AIR 1949 Bom 36 this view was not accepted. Their Lordships preferred to follow the view enunciated in AIR 1935 Cal 488 and stated that a person should be said to be a child till he or she attains majority.

6. Another case relied on by the petitioner is the decision in State v. Ishwarlal, AIR 1950 Nag 231 which has followed AIR 1943 Bom 48.

7. On the other hand the Madras High Court in an early decision in Krishnaswamy Iyer v. Chandravadhana, AIR 1914 Mad 594 in awarding maintenance to a daughter aged 17 observed as follows:

'The word 'child' has not been defined in the Criminal Procedure Code. In England it has got apparently various statutory definitions. But in the absence of any definition or anything to the contrary in an Act, I am of opinion that a 'child' is a person who has not reached full age. It is only then, that she becomes competent to enter into any contract or enforce her claims. As this daughter has not attained the age of majority, i.e., 18, I think she is a 'child' within the section.'

8. In a later case in Kanniah Naidu v. Rajammal AIR 1941 Mad 685, Lakshmana Rao, J., in a short judgment without any discussion and without referring to the earlier decisions held that Section 488 does not limit the right of maintenance to minors and that the age of the girl is therefore immaterial.

9. The same question again came up in Subhamma v. Venkata Reddi, AIR 1950 Mad 394 where Panchapakesa Ayyar, J., had occasion to consider the claim for maintenance for a boy aged 18 and it was held that:

'The 'child' under Section 488 means a minor, whether under the Majority Act or the Court of Wards Act or the Guardians and Wards Act and not simply progeny.'

The decision in AIR 1941 Mad 685 was not followed.

10. I am in respectful agreement with the view consistently taken by the Madras High Court that child under Section 488, CrI. P. C., refers only to a minor. If it could be taken to mean only progeny there is the danger envisaged by his Lordship

Panchapakesa Ayyar, J., in AIR 1950 Mad 394, where a man of 77, unable, owing to senility to maintain himself claiming maintenance from his father aged 97. That could not have been the intention of the Legislature in using the word 'child.' They could have in that ease used the word 'son or daughter.'

11. Again in this case the petitioner for whom maintenance is claimed is aged 22 years. She is a fairly well educated lady, healthy and is not stated to be suffering from any illness. Such a person should be presumed capable of maintaining herself until the contrary is proved. The burden of proving that she is not capable of maintaining herself is on her and if she fails to adduce sufficient proof the Magistrate would be perfectly justified in disallowing her claim for maintenance. If a person is a minor there can be no presumption that he or she is able to maintain himself. On both these grounds the order of the learned First Class Magistrate is correct and calls for no interference. The Revision Petition is dismissed.

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