

Ponnayee Vs. Periya Mooppan

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Court : Chennai

Decided On : Feb-05-1908

Reported in : (1908)18MLJ150

Appellant : Ponnayee

Respondent : Periya Mooppan

Judgement :

ORDER

1. We are not prepared to say that the view taken by the Deputy Magistrate as to the construction of Section 488, Criminal Procedure Code, is wrong. We think that the use of the word 'may' in that section as distinguished from 'shall' shows that the magistrate has a discretion to decide in what cases the award of maintenance may properly be made. No doubt, the discretion must be exercised judicially and reasonably, not capriciously. This was the view taken by Benson J. in the case of Gantapalli Appalamma v. Gantapalli Yellayya. I.L.R. (1897) M. 470.

2. In the present case the Deputy Magistrate did not refuse to award maintenance, because the petitioner was 'living in adultery,' but because she had been guilty of adultery with a low caste man, which led to her expulsion from caste, and thus as we take it, rendered it, in effect, impossible for her to live with him without himself losing the society of his fellow caste-men. We are not prepared to say that in these circumstances the Deputy Magistrate was wrong in refusing to award her maintenance.

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