

Chantan Vs. C. Mathu

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Court : Chennai

Decided On : Dec-01-1915

Reported in : (1916)ILR39Mad957

Judge : Abdur Rahim and ;Ayling, JJ.

Appellant : Chantan

Respondent : C. Mathu

Judgement :

Abdur Rahim, J.

1. This petition raises a question of the interpretation of Section 488 of the Criminal Procedure Code. It is contended before us by the learned pleader who appeared for the petitioner that his client was not liable to any order for the maintenance of his four children because they are entitled to maintenance from their mother's tavazhi and are in fact being maintained; that Section 488 compels the father to maintain his legitimate or illegitimate child 'unable to maintain itself.' The words 'unable to maintain itself,' it is pointed out, have been interpreted in this Court by Sadasiva Ayyar, J., In re Parathy Valappil Moideen (1913) M.W.N. 997 to mean that the child should be physically unable to earn a livelihood, and that if the child is not of sufficient maturity to earn a livelihood, then even if that child belongs to a well-to-do tarwad which is liable for its maintenance, the liability of the father under Section 488 is not taken away. With all respect to the learned Judge, I am

unable to accept this narrow meaning of the words 'unable to maintain itself.' I think the ability contemplated by the section applies as much to the case of a child which has got means of its own or which is entitled in law to be maintained, and is being maintained as in this case by some other person as to a child which is able to earn a living by its own exertions. This is a summary procedure provided by Section 488, and it does not cover entirely the same ground as the civil liability of a father to maintain his child. It does not seem to have been within the contemplation of the legislature that a child which is well-to-do should be entitled under Section 488 to an order for maintenance as against its father. This view derives some support from the decision in *Kariyadan Pokhar v. Kayat Beeran Kutti* I.L.R. (1896) Mad. 461 where the learned Judges seem to suggest that children who are actually being maintained by their mother's tarwad are not entitled to maintenance from their father under Section 488 of the Criminal Procedure Code. In this view of the law, the order of the Joint Magistrate ordering the petitioner to maintain the children is wrong and should be set aside.

Ayling, J.

2. I agree. I think that a child which possesses a legally enforceable right to maintenance from its mother's tarwad stands in the same position as a child which possesses property in its own right, and that neither can be regarded as 'unable to maintain itself' within the meaning of Section 488.

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