

In Re: Bharata Ayyar

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Court : Chennai

Decided On : Dec-13-1923

Reported in : AIR1924Mad549

Appellant : In Re: Bharata Ayyar

Judgement :

ORDER

Odgers, J.

1. This is an application to revise the order of the Sub-Divisional Magistrate of Malappuram, made under Section 488, Criminal Procedure Code, wherein he ordered the petitioner to pay a monthly allowance of Rs. 4, for the maintenance of the child of the respondent, a Hair woman, the petitioner being a Brahmin. The petitioner denied the sambandham and disowned the paternity of the child. The learned Magistrate, however, observed that his Vakil did not press this point seriously v either in the cross-examination of the prosecution witnesses, or in his own defence, and has come to the finding that the paternity of the child is proved. The main point relied upon before the lower Court was that the woman was in a position to maintain the child, and therefore the father was not liable to maintain it. Mr. N.R. Sesba Aiyar before me has taken the same point and relies on two decisions of this Court, namely Chantan v. Mathu [1916] 39 Mad. 957, and Thillu Amma v. Sankunni Menon [1919] 10 L.W. 229. In the former case, it was held that a child that possesses a right to maintenance from its mother's tavazhi is not

entitled to an order for maintenance against its father. It was also held that the words 'unable to maintain' are not confined to physical inability, but to include also pecuniary inability. Abdur Rahim, J., in that case said:

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.² In the later case, in *Thillu Amma v. Sankunni Menon* [1919] 10 L.W. 229, to which Ayling, J., was also a party, as in the earlier case which was followed, the learned Judges say that the offspring of a sambandhan are entitled to maintenance from their tavazhi and if the tavazhi or tarwad has sufficient means to maintain them, they are not entitled to an order for maintenance against their father. And the reason, which prompted the learned judges there, to revise the order of the Magistrate, was that the lower Court had not found what the income of the tavazhi was, nor had it given any finding as to the income of the tarwad. In this case, the learned Magistrate has found as a fact that the respondent's tarwai is not in a position to maintain the child, without an allowance from the petitioner. Sitting here in revision, I am bound by that finding of fact. I must therefore dismiss this Criminal Revision Case.

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