CRIMINAL REVISION.

Before Nasim Ali J.

HEMANTAKUMAR BANERJI 1935

Jan. 2.

v.

MANORAMA DEBEE.*

Maintenance—"Child," Meaning of—Code of Criminal Procedure (Act V of 1898), s. 488—Indian Majority Act (IX of 1875), s. 3.

The word "child" has not been defined in the Code of Criminal Procedure.

In the absence of any statutory definition or anything to the contrary in the Act, it has to be held that a "child" is a person, who is incompetent to enter into any contract or to enforce any claim under the law.

Under the Indian Majority Act, a person, who has not attained the age of majority, *i.e.*, 18, is incompetent to enter into any contract and is, therefore, a child within the meaning of section 488 of the Code of Criminal Procedure.

Krishnaswami Ayyar v. *Chandravadana* (1) and *Shanno Devi* v. *Daya Ram* (2) referred to.

So long a boy is not found to be able to earn his livelihood he must be held to be a child.

CRIMINAL RULE obtained by the objector.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

Sudhangshukumar Mukherji for the petitioner.

Jitendrakumar Sen Gupta for the opposite party.

NASIM ALI J. This Rule was issued upon the District Magistrate of 24-*Parganâs* and the opposite party, Manorama Debee, to show cause why the order of the Police Magistrate of Alipore, dated the 21st August, 1934, refusing the petitioner's prayer for exempting him from further payment of the monthly allowance for the maintenance of the

*Criminal Revision, No. 1100 of 1934, against the order of S. N. Roy, Additional District Magistrate of Alipore, dated Aug. 28, 1934, confirming the order of L. K. Sen, Suburban Police Magistrate of Alipore, dated Aug. 21, 1934.

(1) (1913) I. L. R. 37 Mad. 565. (2) [1933] A. I. R. (Lah.) 1026.

1935

Hemantakumar Banerji v. *Manorama Debee.*

Nasim Ali J.

opposite party's child, Shambhunath, under section 488 of the Code of Criminal Procedure, should not be set aside.

The first ground urged in support of the Rule is that Shambhunath is no longer a child within the meaning of section 488 of the Code of Criminal Procedure, inasmuch as he is now 17 years old and is quite competent to earn his livelihood. It is argued by the learned advocate on behalf of the petitioner that a child, as contemplated by section 488, is an infant, who has not yet attained puberty. The word "child" has not been defined in the Criminal Procedure Code. In the absence of any statutory definition or anything to the contrary in the Act, I am inclined to hold that "child" is a person, who is incompetent to enter into any contract or to enforce any claim under the law. Under the Indian Majority Act, a person, who has not attained the age of majority, *i.e.*, 18, is incompetent to contract and is, therefore, a child within the meaning of section 488. [See *Krishnaswami Ayyar* v. *Chandravadana* (1) and *Shanno Devi* v. *Daya Ram* (2).] I am, therefore, unable to accept this contention.

The second point, that was urged by the advocate, was that the child is not now unable to maintain himself and consequently the petitioner is no longer bound under the law to maintain him. The learned advocate argues that, though the boy is now reading in school, the petitioner is not bound to keep him in school, as section 488, Criminal Procedure Code, does not confer upon the child the right to better his prospects by staying in school at the expense of the father. It was also argued that he is now sufficiently grown up to earn his own livelihood by working in some factory. It appears that the boy was examined as a court-witness. In his deposition he stated as follows:—

> I read in the second class of a High English School. It is out of the question for me to get an employment suitable to my status and life as I am only a student of the second class of a high school.

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1935

Hemantakumar Banerji v. *Manorama Debee.*

Nasim Ali J.

This statement was not challenged in cross-examination by the petitioner. The petitioner was also examined as a court-witness. He did not, in his evidence, contradict the statement of the boy. Under these circumstances, I am not in a position to say that the boy is now able to maintain himself. The learned advocate also contended that there was no evidence in this case that the boy ever made any attempt to get any employment and, consequently, it could not be said that he failed to get any employment. The petitioner as well as the boy belong to a *bhadraloke* class. It cannot be expected that he would make an attempt to earn his livelihood by working as a cooly. As he is now in school, the petitioner did not suggest, either in his evidence or during the cross-examination of the boy, that, regard being had to the social position of the petitioner as well as of the boy, it could be expected that at this age the boy would be able to find a suitable employment, even if he made any attempt in that direction. This contention has, therefore, no force.

The Rule is accordingly discharged.

Rule discharged.

G.S.