

[4 Mad. 229.]

APPELLATE CRIMINAL.

The 21st October 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen

against

Vitti Chokkan and others*

Indian Penal Code, Section 277—Public spring, river water.

The term "public spring," in Section 277† of the Indian Penal Code does not include a continuous stream of water running along the bed of a river.

THE Second-class Magistrate of Periyakulam Taluk having convicted and fined one Vetti Chokkan for having "dirtied the drinking waters of the Varaga river," the only drinking water available in the locality, by washing bullocks therein, under paragraph 7 of Section 48 of the Police Act (Act XXIV of 1859), and having also convicted and fined four other persons under Section 277 of the Indian Penal Code for having "rendered the spring water of the Varaga river unfit for the purpose of bathing and drinking by putting up a dam across the river and catching fish," the District Magistrate of Madura referred the cases for the orders of the High Court under Section 296 of the Code of Criminal Procedure.

No one appeared at the hearing.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

Judgment:—We think that the "public spring" contemplated in Section 277 of the Indian Penal Code does not include a continuous stream of water running along the bed of a river, and that both convictions are bad and must be quashed.

NOTES.

[For similar rulings, see 1 Weir 230; 6 Bom. L. R. 52, Ratanlal, 14; 215.]

* Case No. 52 of 1881 referred by H. J. Stokes, District Magistrate of Madura, under Section 296 of the Code of Criminal Procedure.

† [Sec. 277 :—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.]

[230] APPELLATE CRIMINAL.

The 27th October, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen *against* Karri Papayamma. **Criminal Procedure Code, Sections 536—538.*

Notwithstanding the provisions of Section 538 of the Code of Criminal Procedure, the Magistrate who has made an order for maintenance under Section 536 may issue a warrant for collection of arrears of maintenance when the husband is of his jurisdiction,

THIS case was referred for the orders of the High Court by the Sessions Judge of Ganjam in the following terms:—

“The petitioner is the wife of one Karri Ramanuja Naidu, now residing at Anakapalli in the Vizagopattam District. She obtained an order for maintenance in the Court of the Senior Assistant Magistrate of Berhampore.

“Upon her application to the Magistrate to issue a warrant for the collection of arrears, the Magistrate decline to grant her request on the ground that she was bound to make the application to the Magistrate having jurisdiction at the place where her husband resides.

“Section 538, says that the order ‘shall be enforceable.’

* Case No. 70 of 1881 referred by J. R. Daniel, Sessions Judge of Ganjam under Section 296 of the Code of Criminal Procedure.

Sec. 538:—A copy of the order of maintenance shall be given to the person for whose maintenance it is made or to the guardian of such person; and shall be enforceable by any Magistrate in any place where the person to whom the order is addressed may be, on the Magistrate being satisfied as the identity of the parties and the non-payment of the sum claimed.

Sec. 536:—If any person, having sufficient means, neglects or refuses to maintain his wife, or legitimate or illegitimate child unable to maintain himself, the Magistrate of the District, or a Magistrate of a division of a District, or a Magistrate of the first class may, upon due proof thereof by evidence, order such person to make a monthly allowance for the maintenance of his wife or such child at such monthly rate, not exceeding fifty rupees in the whole, as to such Magistrate seems reasonable.

Such allowance shall be payable from the date of the order.

If such person wilfully neglects to comply with this order, such Magistrate may, for every breach of the order, by warrant, direct the amount due to be levied in the manner provided for levying fines; and may order such person to be imprisoned with or without hard labour for any term not exceeding on month for each month's allowance remaining unpaid.

Provided that, if such person offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, such Magistrate may consider any grounds of refusal stated by such wife; and may make the order allowed by this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by consent.]