

APPELLATE CRIMINAL.

Before Mr. Justice Brandt.

RANGAMMA

against

MUHAMMAD ALI.*

*Criminal Procedure Code, s. 488.*1886.
September 16.

Where an application is made to a Magistrate to enforce an order for maintenance, passed under s. 488 of the Code of Criminal Procedure, such Magistrate is not bound to enforce the order if the defendant proves that the claim for maintenance has been released.

On the 1st of December 1885 Muhammad Ali was ordered by C. Rámachandrayyar, a Presidency Magistrate, to pay Rs. 5 a month to Rángamma, for the maintenance of three illegitimate children.

On the 14th of July 1886 Muhammad Ali applied to the same Magistrate to cancel this order, on the ground that on the 16th January 1886 he had paid Rs. 60 to Rangamma and obtained a release from her by which she agreed to claim no more maintenance from him. The Magistrate held that the case did not fall under s. 489 of the Code of Criminal Procedure and that the proper course for Muhammad Ali was to plead the release if Rangamma moved the court to enforce the order.

On the 26th July Rangamma complained to the Acting Chief Presidency Magistrate (W. M. Scharlieb) against Muhammad Ali for neglecting to pay Rs. 5 as ordered on the 1st December 1885.

The Magistrate ordered payment forthwith and costs.

Against this order Muhammad Ali presented a petition to the High Court.

In forwarding the record, the Acting Chief Presidency Magistrate remarked that the proceedings held by him were the enforcement of a previous order, and that if Muhammad Ali felt aggrieved by the order for maintenance, he ought to have asked

* Criminal Revision Case 437 of 1886.

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the High Court to set it aside, or to have applied under s. 489, and that he had made no such application.

Dunhill for Muhammad Ali.

The Court (Brandt, J.) delivered the following

JUDGMENT:—The Code of Criminal Procedure contains no express provision for cancelling an order for maintenance in circumstances such as those here represented, but if it be true that the woman received a lump sum of money in satisfaction of all claims for maintenance for herself and the illegitimate children of herself and the petitioner, a Magistrate would clearly not only be justified in refusing to enforce the order for maintenance but would be wrong in enforcing it; of course I know nothing as to the truth or untruth of the petitioner's allegations. If the woman accepted the money said to have been paid in satisfaction of all claims, including a claim on account of the infant in arms, the youngest child, then the woman will have no right to an allowance for this child either; but if this is not so, and the rest of the arrangement is proved as alleged by the petitioner, the allowance should be reduced, as provided in s. 489 Criminal Procedure Code, so as to secure the maintenance of the infant child only.

The order of the Chief Magistrate is set aside, and he is directed to dispose of the petitioner's application in due course of law. The Chief Magistrate is in error in thinking that the petitioner did not apply to have the order originally granted reconsidered; such application was made to the Presidency Magistrate, Mr. Rámachandrayyar, and an order was passed by that Magistrate that it might be considered when and if the woman again applied to enforce the maintenance order.
