

APPELLATE CRIMINAL.

Before Mr. Justice Handley and Mr. Justice Best.

PONNAMMAL, *In re*.*

*Criminal Procedure Code, Act X of 1882, s. 488—Maintenance case—
Failure to pay process fees.*

An application for maintenance under Criminal Procedure Code, s. 488, should not be dismissed on the failure on the part of the applicant to comply with an order for payment of process fees.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by H. M. Winterbotham, Acting District Magistrate of Tanjore.

The case was stated by the District Magistrate as follows:

“The Head Assistant Magistrate has dismissed this application for maintenance under section 488, Criminal Procedure Code, on the ground that the applicant failed to pay process fees as ordered. The record does not show what fees the applicant was called upon to pay, or for what purpose; but, presumably, it was for the issue of summons to the defendant.

“Neglect to maintain a wife is not an ‘offence,’ and the rules made by the High Court pursuant to section 20 of the Court Fees Act (VII of 1870), to regulate the payment of process fees in the case of offences other than offences for which the Police may arrest without warrant, do not, I think, apply to applications for maintenance. I suppose the exemption to have been intentional, as in many cases the woman applying to a Magistrate for maintenance is a pauper, or not in a position to pay process fees. I think the Head Assistant Magistrate’s order dismissing the application is illegal and should be set aside.”

Counsel were not instructed.

JUDGMENT.—We are of opinion that the District Magistrate is right. Section 20, clause II of the Court Fees Act has reference only to fees for processes issued in the case of “offences,” and it has been held that an order for payment of maintenance is not a conviction for an “offence.” See *Queen v. Golam Hossein Chowdhry*(1); cf. *Reg. v. Thakur Ira*(2).

* Criminal Revision Case No. 468 of 1892.

(1) 7 W.R. Cr., 10.

(2) 5 Bom. H.C.R., 81.

We, therefore, set aside the Head Assistant Magistrate's order dismissing the application and direct the Magistrate to proceed with the inquiry and pass an order in accordance with law.

PONNAMMAL,
Isr.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice,
and Mr. Justice Handley.*

QUEEN-EMPRESS

v.

GOVINDA PILLAI.*

1892.
September 1.

*Penal Code, Act XLII of 1860, s. 500—Defamation—Privilege of witness—
Investigation by Police.*

A statement made in answer to a question put by a Police officer under Criminal Procedure Code, s. 161, in the course of investigation made by him is privileged, and cannot be made the foundation of a charge of defamation.

CASE referred for the orders of the High Court under Criminal Procedure Code, s. 438, by T. Weir, Sessions Judge of Madura.

The case was stated by the Sessions Judge as follows :

“The material facts are that in the course of an investigation by the Police into a charge of murder, which was afterwards committed to the Sessions Court for trial (Register Case No. 12 of 1891, Usilampatty Magistrate's file or Session Case No. 99 of 1891) the said Govinda Pillai, when examined by the Police Head Constable (third witness for the prosecution), stated, in the presence of others, that he was keeping the complainant, a married woman. When afterwards examined as a witness for the prosecution (eighth witness) before the Committing Magistrate who held the preliminary enquiry into the murder case, he repeated the same statement, and added that he was told by the complainant that the deceased (in the murder case, was mistaken by her relations for him (Govinda Pillai defendant) and murdered under mistake, their object being to kill him (defendant) for his criminal intimacy with her. The Deputy Magistrate was of

* Criminal Revision Case No. 248 of 1892.