

APPELLATE CRIMINAL.

Before Mr. Justice Abdur Rahim and Mr. Justice Ayling.

CHANTAN (COUNTER-PETITIONER), PETITIONER,

1915.
December 1.

v.

C. MATHU (PETITIONER), RESPONDENT.*

Criminal Procedure Code (Act V of 1898), sec. 488—“Unable to maintain itself”, meaning of—Child entitled to maintenance from its mother’s tavazi not entitled to order for maintenance from father.

A child that possesses a right to maintenance from its mother’s tavazhi is not entitled under section 488, Criminal Procedure Code (Act V of 1898), to an order for maintenance against its father.

Kariyadan Pokkar v. Kayat Beeran Kutti (1896) I.L.R., 19 Mad., 461, followed.

In re Parathy Valappil Moideen (1913) M.W.N., 997, not followed.

The words “unable to maintain” in section 488 are not confined to physical inability but include also pecuniary inability.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898) praying the High Court to revise the order of T. H. HILL, the Acting Joint Magistrate of Tellicherry, in Miscellaneous Case No. 52 of 1915.

The respondent who was the wife of the petitioner applied to a Magistrate for an order for maintenance of his minor children alleging that the petitioner neglected to maintain them. Though the Magistrate found that the children were in fact being maintained by their mother’s (respondent’s) tavazhi and though the respondent admitted that she was entitled to some properties in her tavazhi and tarwad, the Magistrate made an order for maintenance on the ground that the petitioner neglected to maintain them. Hence this Revision Petition.

C. Kunhi Raman for the petitioner.

The respondent did not appear either in person or by pleader.

ABDUR RAHIM, J.—This petition raises a question of the interpretation of section 488 of the Criminal Procedure Code. It is contended before us by the learned pleader who appeared

ABDUR
RAHIM, J.

* Criminal Revision Case No. 573 of 1915 (Criminal Revision Petition No. 456 of 1915).

CHANTAN
D.
MATHU.
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ABDUR
RAHIM, J.

for the petitioner that his client was not liable to any order for the maintenance of his four children because they are entitled to maintenance from their mother's tavazhi and are in fact being maintained; that section 488 compels the father to maintain his legitimate or illegitimate child "unable to maintain itself." The words "unable to maintain itself," it is pointed out, have been interpreted in this Court by SADASIVA AYYAR, J., in *In re Parathy Valappi Moiteen*(1) to mean that the child should be physically unable to earn a livelihood, and that if the child is not of sufficient maturity to earn a livelihood, then even if that child belongs to a well-to-do tarwad which is liable for its maintenance, the liability of the father under section 488 is not taken away. With all respect to the learned Judge, I am unable to accept this narrow meaning of the words "unable to maintain itself." 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. This is a summary procedure provided by section 488, and it does not cover entirely the same ground as the civil liability of a father to maintain his child. It does not seem to have been within the contemplation of the legislature that a child which is well-to-do should be entitled under section 488 to an order for maintenance as against its father. This view derives some support from the decision in *Kariyadan Pokkar v. Kayat Beeran Kutti*(2) where the learned Judges seem to suggest that children who are actually being maintained by their mother's tarwad are not entitled to maintenance from their father under section 488 of the Criminal Procedure Code. In this view of the law, the order of the Joint Magistrate ordering the petitioner to maintain the children is wrong and should be set aside.

AYLING, J.

AYLING, J.—I agree. I think that a child which possesses a legally enforceable right to maintenance from its mother's tarwad stands in the same position as a child which possesses property in its own right, and that neither can be regarded as "unable to maintain itself" within the meaning of section 488.

N.R.

(1) (1913) M.W.N., 997,

(2) (1896) I.L.R., 19 Mad., 461.