

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Odgers.

MADDU VENKAYYA (PETITIONER), PETITIONER,

1923,
March 12.

v.

KAMIREDDI PADAMMA AND ANOTHER (COUNTER-PETITIONERS),
COUNTER-PETITIONERS.*

Criminal Procedure Code (V of 1898), sec. 488—Order of Magistrate awarding maintenance to an illegitimate child—Subsequent decree of Civil Court declaring that the child was not illegitimate—Application not to give effect to Magistrate's order.

On obtaining a decree of a Civil Court that a child is not his illegitimate child, a person is entitled to ask the Magistrate not to give effect to his previous order awarding maintenance to the child. *Mahomed Abid Ali Kumar Kadar v. Ludden Sahiba*, (1887) I.L.R., 14 Cal., 276, and *Illath Narayanan Moosad v. Kathil Itticherry Amma*, (1917) 33 M.L.J., 449, followed.

CASE referred for the orders of the High Court, under section 488 of the Criminal Procedure Code, by the District Magistrate, Vizagapatam, in R.C. No. 4052 of 1922-C-2, dated 6th November 1922.

THE facts are given in the Judgment,

P. R. Srinivasa Ayyangar for petitioner.

V. L. Ethiraj for the Public Prosecutor.

The JUDGMENT of the Court was delivered by

AYLING, J.—The petitioner in this case was directed by the Subdivisional Magistrate of Narasapatam under section 488 of the Criminal Procedure Code to pay maintenance at the rate of Rs. 3 a month for his illegitimate child. He subsequently brought a suit in the District Munsif's Court of Yellamanchili and succeeded in securing a final decision on appeal to the Subordinate Judge of

* Criminal Revision Case No. 91 of 1923.

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Vizagapatam to the effect that the child was not his. On this he applied to the Subdivisional Magistrate drawing his attention to the decision of the Subordinate Judge and making the following prayer :—

“Your petitioner, therefore, prays your honourable Court to abstain from giving further effect to the order, dated 21st May 1918, the order awarding maintenance, in view of the decree and judgment of the Additional Subordinate Judge declaring that the second counter-petitioner was not born to the petitioner and that the petitioner is not bound to maintain her.”

This petition has been returned with the following endorsement :—

“The petitioner is free to seek whatever remedy he likes against the order of this Court which cannot be reconsidered.”

The order of the Subdivisional Magistrate is obviously based on a misconception. There is no question of reconsidering the order of maintenance for which no provision is made in the Code, but, where the relationship on which the maintenance order is based has been declared by the final decree of a competent Civil Court not to exist, it is open to the person adversely affected thereby to ask the Magistrate to abstain from giving any further effect to his order of maintenance. This has been laid down in *Mahomed Abid Ali Kumar Kadar v. Ludden Sahiba*(1), and it is in accordance with the view of the law taken by a Bench of this Court in *Ilath Narayanan Moosad v. Kathil Itticherry Amma* (2), although in that case the learned Judges were dealing with a maintenance order passed after the decision of the Civil Court.

The order of the Subdivisional Magistrate is therefore set aside and he is directed to restore the petition to file and dispose of it in the light of the above remarks.

N.R.

(1) (1887) I.L.R., 14 Cal., 276.

(2) (1917) 33 M.L.J., 440.