

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan.

MEENATCHI AMMAL (COUNTER-PETITIONER), PETITIONER,

1924,
October 29.

v.

KARUPPANA PILLAI *alias* MUTHUSWAMI PILLAI
(PETITIONER), RESPONDENT.*

Code of Criminal Procedure (Act V of 1898), sec. 488—Maintenance order in favour of a girl—Girl subsequently married—No proof of ability to maintain herself—Whether maintenance order could be cancelled—Section 489—Magistrate's powers to cancel his order.

An order under section 488 of the Code of Criminal Procedure for the maintenance of a girl cannot be cancelled on her marriage without proof that she has thereby become able to maintain herself and ceased to depend upon the maintenance ordered.

Section 489 empowers a Magistrate to altogether cancel his order awarding maintenance and does not restrict him to merely reducing the amount.

PETITION under sections 435 and 439 of the Code of Criminal Procedure Code, praying the High Court to revise the order of T. B. RUSSELL, Joint Magistrate of Dindigul, in his proceedings, dated 6th February 1924, in M.C. No. 6 of 1924.

The facts necessary for this report are set out in the Judgment.

T. S. Srinivasa Rao for the petitioner.

T. Nallasivan Pillai for the respondent.

The Public Prosecutor on behalf of the Crown.

JUDGMENT :—

In this case a rather important question has been raised under Chapter 36 of the Criminal Procedure

* Criminal Revision Case No. 336 of 1924.

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Code with reference to the maintenance of a child. The petitioner was the mother of two children, a girl who is now aged about 14, and a boy of 10 years. When they were younger she had obtained from the Magistrate an order for their maintenance from their illegitimate father, the counter-petitioner, at the rate of Rs. 10 a month. The girl has been recently married, but it is not clear whether she has joined her husband or not. On the application of the father the Magistrate has reduced the maintenance given previously to a sum of Rs. 6 for the boy alone, cancelling altogether the maintenance allowed to the girl. He does not give any reasons for his order but merely says "The girl is not now entitled to maintenance."

I take it that his view is, that as the girl is married she is no longer entitled to maintenance. The question is whether this is correct. A similar question arose once before in this Court in the case reported in 2 Weir, 650; but their Lordships did not give any definite ruling on it as they were able to rely upon an express undertaking by the husband of the child to maintain his wife, to justify the cancellation of the maintenance. It seems to me that the question really turns upon whether the altered circumstances are such that the child has become able to maintain herself. If she has become able to maintain herself by reason of her marriage and ceased to depend on the original maintenance, I would be prepared to hold that the cancellation under section 489 of the Criminal Procedure Code would be the proper order to make, but if, in spite of her marriage, the girl still remains unable to maintain herself either because her husband is too poor to maintain her or for any other good reason, the father's liability to maintain the child would still exist under section 488. This case, therefore, must be considered

from that point of view. The Magistrate should enquire and find out whether the husband is able to maintain the girl and whether she has therefore ceased to be under the difficulty of being unable to maintain herself. If she has, then the Magistrate's order would be right. But, if the Magistrate finds that the girl is still unable to maintain herself, the order of cancellation will not be right.

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I, therefore, set aside the order of the Magistrate and send the case back to him for passing fresh orders in the light of the above observations.

It was contended that under section 489 the Magistrate could not altogether cancel the order of maintenance but could only alter it or reduce it. I do not think the word "alter" is used in any such restricted meaning. The reduction of the maintenance to nothing would also come within the meaning of the word "alteration." I therefore reject that argument.

The counter-petitioner will pay the costs of this petition to the petitioner.

D.A.R.

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan.

PANDALAPALLI NARAYANA REDDI AND TWO OTHERS
(ACCUSED), PETITIONERS,

1924,
November
14.

v.

DYVADEENACHAR (COMPLAINANT), RESPONDENT.*

*Madras Estates Land Act (Madras Act I of 1908), sec. 77 (v)—
Distraint of cattle—Rescuing them, if an offence under sec.
212 (b).*

A person who rescues cattle distrained under section 77 (ii) of the Madras Estates Land Act is not guilty of any offence

* Criminal Revision Case No. 141 of 1924.