

APPELLATE CRIMINAL.

Before Mr. Justice Burn.

ARUNACHALA ASARI (COUNTER-PETITIONER), PETITIONER,

1933,
April 27.

v.

ANANDAYAMMAL (PETITIONER), RESPONDENT.*

*Criminal Procedure Code (Act V of 1898), sec. 488—Scope of
—Ordinary conjugal rights—Whether sec. 488 includes.*

In a wife's application for maintenance under section 488 of the Criminal Procedure Code, the husband offered maintenance in his house provided she lived in a separate room and did not associate with the other family members. The lower Court upheld the wife's refusal to accept maintenance on such conditions, and ordered the maintenance prayed for. Objection to such order being taken on revision,

Held, that section 488 of the Code had nothing to do with ordinary conjugal rights, as "maintenance" means nothing more than appropriate food, clothing, and lodging, and that the wife had no sufficient grounds for refusing the offer, as she could not claim to be treated "as a 'wife'" under section 488.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, and section 107 of the Government of India Act, praying the High Court to revise the order of the Court of the Subdivisional First-class Magistrate of Salem, dated 31st day of October 1932 and made in Miscellaneous Case No. 53 of 1932.

K. S. Jayarama Ayyar and *R. Sundaralingam* for petitioner.

Public Prosecutor (L. H. Bewes), *T. Krishnaswami Ayyangar* and *S. K. Narasimhachari* for respondent.

* Criminal Revision Case No. 24 of 1933.

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ORDER.

I cannot see that section 488 of the Criminal Procedure Code has anything to do with ordinary conjugal rights; it deals with "maintenance" only and I see no reason why maintenance should be supposed to include anything more than appropriate food, clothing and lodging.

On the facts of this case it is clear that the husband has offered to give his wife maintenance in his house but he wants her to live in a separate room and not to associate with the other members of his family. She has refused this offer and in my opinion she has no sufficient grounds for refusing. She cannot claim under section 488 of the Code of Criminal Procedure to be treated "as a wife"; she can only claim to be maintained on a scale appropriate to her station in life.

The order for payment of separate maintenance is therefore unsupportable, and I set it aside.

K.W.R.

