

CRIMINAL REFERENCE.

Before Mr. Justice McDonell and Mr. Justice Beverley.

UPENDRA NATH DHAL (PETITIONER) v. SOUDAMINI DASÍ (OPPOSITE PARTY).^{*}

1886
February 5.

Maintenance—Criminal Procedure Code (Act X of 1882) ss. 488, 489.

A Magistrate has no power, under s. 488 of the Code of Criminal Procedure, to make an order for maintenance at a progressively increasing rate.

He may, however, under s. 489, from time to time, alter the rate of the monthly allowance granted as maintenance under s. 488.

REFERENCE to the High Court under s. 438 of Act X of 1882.

On the 29th October 1885 the Deputy Magistrate of Midnapore, under s. 488 of Act X of 1882, passed an order for the maintenance of an illegitimate child on the following scale:— (1) From date for two years at Rs. 1-8 per month; (2), after two years for two years more at Rs. 3 per month; (3), after that time until marriage at Rs. 6 per month.

The Sessions Judge being of opinion that the order, in as far as it prescribed a prospective increase of the allowance, was improper—*Musumat Munglo v. Jumna Dass* (1)—sent up the case to the High Court recommending the alteration of the order.

No one appeared for either party on the reference.

The opinion of the Court (MCDONELL and BEVERLEY, JJ.) was as follows:—

We think that the Sessions Judge is right. A Magistrate has no power to make an order under s. 488 of the Code of Criminal Procedure for maintenance at a progressively increasing rate. Under that section the allowance must be ordered at a fixed monthly rate, but under s. 489 it may be altered from time to time. We accordingly set aside that part of the Deputy Magistrate's order which directs a prospective increase in the rate, and direct that the allowance be levied at the rate of Rs. 1-8 only per mensem till such time as it may be altered under s. 480.

T. A. P.

Order varied.

* Criminal Reference No. 248 of 1885, made by R. M. Towers, Esq., Sessions Judge of Midnapore, dated the 30th of December 1885, against the order of the Deputy Magistrate of Midnapore, dated the 29th of October 1885.