

act from the category of an offence under section 373. The offence was complete and perfected when she took Dhanni over from her father years ago.

The accused does not prove that her intent or knowledge was other than would reasonably be presumed from the evidence given as to the practice prevalent among *Naik* Rájputs, and as to the object with which Dhanni, Lali and Moti all say the girl was left with the accused.

There was a feeble attempt made to contend that the expressions "*umr par ana*," "*javán*," and "*báligh*" refer to an age far above sixteen. We know of no authority for any such construction. The natural meaning of the word is the arriving at what is known as the age of puberty, and we must take the words in their natural and ordinary sense.

None of the reasons advanced as grounds for interfering are established, and the sentence is certainly not too severe.

We accordingly dismiss the application and direct that the record be returned.

If Musammat Chanda is on bail she must surrender and undergo the remaining term of imprisonment to which she was sentenced.

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 QUERN-  
EMPRESS  
v.  
CHANDA.

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## APPELLATE CIVIL.

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July 1.

*Before Mr. Justice Know and Mr. Justice Aikman.*

SUBHUDRA AND ANOTHER (DEFENDANTS) v. BASDEO DUBE (PLAINTIFF).\*

*Criminal Procedure Code, section 488—Order for maintenance of wife—such order not affected by declaratory decree of Civil Court.*

An order for the maintenance of a wife duly made under section 488 of the Code of Criminal Procedure cannot be superseded by a declaratory decree of a Civil Court to the effect that the wife in whose favor such order has been made has no right to maintenance. *Subai Domai v. Katiraur Dome* (1), referred to.

THE plaintiff in this case had had an order passed against him under section 488 of the Code of Criminal Procedure directing him to pay a certain sum for the maintenance of the first defendant and

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\*First appeal No. 22 of 1895, from an order of Pandit Indar Narain, Subordinate Judge of Mirzapur, dated the 28th February 1895.

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her child, of whom he was found to be the father. That order was contested by the plaintiff but was finally confirmed by an order of the High Court dated the 29th July 1893.

In the suit out of which this appeal has arisen the plaintiff-appellant claimed a declaratory decree that the first defendant was a woman of loose character; that her son, the second defendant, was not his; and that defendant No. 1 was not entitled to maintenance.

The Court of first instance (Munsif of Mirzapur) dismissed the suit, holding that the relief sought thereby having already been refused by the High Court, the suit would not lie. The plaintiff appealed, and the lower appellate Court (Subordinate Judge of Mirzapur), taking a contrary view, remanded the suit under section 562 of the Code of Civil Procedure.

From this order of remand the plaintiff appealed to the High Court.

Munshi *Madho Prasad*, for the appellants.

Pandit *Sundar Lal* for the respondent.

KNOX and AIKMAN, JJ.—Musammat Subhudra, the appellant in this case, is a Hindu woman, the wife of one Basdeo Dube, the respondent. She obtained from the Magistrate two orders, one dated the 14th of March 1893, and the other the 23rd of November 1893, declaring herself and a child entitled to maintenance from Basdeo Dube. That order in due course came before this Court sitting as a Court of Criminal Revision, and was upheld. The respondent after that brought a suit in the Civil Court setting out as his cause of action the orders of the Magistrate, and praying that it might be declared that the appellant was a woman of loose character and outcasted; that the child born of her was not begotten of the respondent; that Musammat Subhudra be declared to have no right of maintenance; and lastly, that it be declared that there is now no relationship of husband and wife between the parties.

These reliefs are not reliefs which a Civil Court can grant, especially under the circumstances of the present case. What the respondent seeks to do is to set aside the maintenance orders passed by the Magistrate, who had full jurisdiction to pass them, and to declare that they are of no force.

The matter is not one that has not been before the Courts. In *Sabad Domni v. Katiraur Dome* (1) Pontifex, J., on a reference made by a Magistrate before whom a decree was produced of a Civil Court, to the effect that the woman in whose favour maintenance had been ordered, was not entitled to such maintenance, held as follows:—“ Upon this reference, we are of opinion that the decree of the Civil Court cannot affect the order of the Magistrate, even if the Civil Court had jurisdiction, which it has not, to make a declaratory order as to the paternity of the child in question.”

We decree the appeal, set aside the decree of the lower appellate Court, and, though we do not agree with the reasons given by the learned Munsif, we restore his decree dismissing the suit with costs.

The appellant will have her costs in all Courts.

*Appeal decreed.*

*Before Mr. Justice Banerji.*

MUHAMMAD HUSEN ALI KHAN (JUDGMENT-DEBTOR) *v.* THAKUR  
DHARAM SINGH (DECREE-HOLDER).\*

*Act No. IV of 1882 (Transfer of Property Act), section 88—Suit for sale on a mortgage—Purchase at auction sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which credit is to be given to the mortgagor.*

A mortgagee, decree-holder, in a suit for sale under section 88 of the Transfer of Property Act, 1882, brought part of the mortgaged property to sale, and, with the leave of the Court, purchased it himself. The amount realized by the sale being insufficient to satisfy the mortgage debt, the decree-holder applied for execution against the remainder of the property comprised in the mortgage. *Held* that the decree-holder was not bound to give credit to the mortgagor to the amount of the market value of the mortgaged property purchased by him, but only to the amount of the actual purchase-money. *Mahabir Parshad Singh v. Macnaghten* (2), *Sheonath Doss v. Janki Prasad Singh* (3), and *Gunga Pershad v. Jawahir Singh* (4), referred to.

In this case the respondent had obtained a decree against the appellant under section 88 of the Transfer of Property Act for sale of certain property which had been mortgaged to him by the appellant. In execution of that decree the appellant caused part of

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July 10th.

\* First appeal No. 29 of 1894, from an order of Babu Ganga Saran, B.A., Subordinate Judge of Aligarh, dated the 18th November 1893.

(1) 20 W. R., C. R. 58.

(2) I. L. R., 16 Calc., 682.

(3) I. L. R., 16 Calc., 132.

(4) I. L. R., 19 Calc., 4.