

## REVISIONAL CRIMINAL.

*Before Mr. Justice Broadway.*

ABDUL RAHIM, Petitioner

*versus*

MST. AMIR BEGUM, Respondent.

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March 26.

**Criminal Revision No. 294 of 1926**

*Criminal Procedure Code, Act V of 1898, section 488 (1) and (2)—Maintenance—not allowable for any period prior to date of application—nor for the child of the man's wife by a former husband.*

*Held*, that under section 488 (2) of the Code of Criminal Procedure the Magistrate has no power to make an order for payment of any sum for maintenance for any period prior to the date on which the application for maintenance is lodged.

*Mussammatt Oomree v. Elahee Bakhsh* (1), referred to.

*Held also*, that under section 488 (1) a father is liable for the maintenance of his legitimate or illegitimate child unable to maintain itself, but not for the child of his wife by a former husband.

*Case reported by Malik Ahmad Yar Khan, Sessions Judge, Rawalpindi, with his No. 176-G. of 13th February 1926.*

The accused, on conviction by C. Keelan, Esquire, exercising the powers of a Magistrate of the 1st class, in the Rawalpindi District, was ordered, by order dated 4th January 1926 under section 488 of the Criminal Procedure Code, to pay maintenance, Rs. 35 *per mensem*.

The facts of this case are as follows :—

This case was under section 488, Criminal Procedure Code, by a wife against her husband for an order of her own maintenance and that of her two children, a daughter by her present husband, the petitioner,

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and a boy by her former husband. The application under section 488, Criminal Procedure Code, was filed before the Magistrate on the 7th October 1925.

The defence was that the applicant had been divorced on the 4th July 1925. The Magistrate accepted the plea that the applicant had been divorced on the 4th May 1925 and held that her divorce was communicated to her on the 15th July 1925 and that the applicant with her children had been neglected by her husband from about the middle of October 1924 to about the 14th July 1925 and for this period he granted maintenance to the wife at the rate of Rs. 25 a month and to her two children at the rate of Rs. 10. The second party has filed a revision application on the following grounds:—

- (1) The Magistrate at the most could award in law maintenance from the date of the application and his order for maintenance for the period prior to the date of the application was illegal.
- (2) The petitioner was not liable for the maintenance of the boy who was the son of another man.
- (3) The monthly rate of maintenance is excessive.

Section 488 (2) says that such allowance shall be payable from the date of the order or if so ordered from the date of the application for maintenance. According to *Mussammatt Oomree v. Elahee Bakhsh* (1), the Magistrate had no power to make an order for payment of any sum for the maintenance for any period prior to the date on which the application for maintenance was lodged. As in this case the application for maintenance was filed in Court on the 7th

October 1925 the order of maintenance for a period prior to this date was clearly illegal.

Under section 488 (1) a father is liable for the maintenance of his legitimate or illegitimate child unable to maintain itself but not for the child of another man. So the order of the Magistrate regarding the maintenance of the boy in this case was also clearly wrong.

The petitioner is bound to maintain his minor daughter *Mussammat* Shah Jahan Begum, aged 15 months, who is with her mother but the Magistrate made no order for her future maintenance. A sum of Rs. 5 *per* month for her maintenance is not too much, because her father, the petitioner, is an overseer and is drawing Rs. 80 a month.

The proceedings are forwarded to the High Court under section 438, Criminal Procedure Code, with the recommendation that the order for the maintenance of the divorced wife *Mussammat* Amir Begum and her son be quashed and an order for the future maintenance of the minor daughter *Mussammat* Shah Jahan Begum at the rate of Rs. 5 a month from the 7th October 1925 be passed against her father Abdul Rahim.

#### ORDER OF THE HIGH COURT.

BROADWAY J.—For the reasons given in the order of the reference I set aside the order directing payment of maintenance prior to the date of the application and order that the petitioner Abdul Rahim shall pay to the respondent *Mussammat* Amir Begum the sum of Rs. 5 *per mensem* from the 7th October 1925 for the support of his daughter *Mussammat* Shah Jahan Begum.

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*Revision accepted.*