

REVISIONAL CRIMINAL.

Before Mr. Justice Jai Lal.

MUSSAMMAT SARFRAZ BEGAM—Petitioner

1927

versus

MIRAN BAKHSH—Respondent.

Nov. 14.

Criminal Revision No. 1152 of 1927.

Criminal Procedure Code, Act V of 1898, section 488—Maintenance of Muhammadan infant daughter—living with her mother separate from her father—who offered to maintain her if her custody were given to him.

Held, that where a Muhammadan infant daughter is living with her mother (her legal guardian) who is living separately from her husband, an order for maintenance under section 488 of the Code of Criminal Procedure cannot be refused merely on the ground that the offer made by the father to maintain her, if the child resides with him, is declined.

Sardar Muhammad v. Nur Muhammad (1), and Man Singh v. Mst. Dharmon (2), distinguished.

In re Parathy Valappil Moideen (3), and Murgesan Mudaliar v. Sodiamma (4), relied upon.

Application for revision of the order of Lt.-Col. F. C. Nicolas, Sessions Judge, Lahore, dated the 22nd March 1927, affirming that of Lala Wazir Chand, Magistrate, 1st class, Lahore, dated the 3rd February 1927, dismissing the application.

AHMAD BAKHSH, for Petitioner.

GANGA RAM, for Respondent.

JUDGMENT.

JAI LAL J.—*Mussammat Sarfraz, aged 8 or 9 months, applied through her mother Mussammat Iqbal Begam for an order of maintenance under section*

JAI LAL J.

(1) 22 P. R. (Cr.) 1917.

(3) (1913) 21 I. C. 469.

(2) 18 P. R. (Cr.) 1894.

(4) (1918) 30 I. C. 480.

1927

MST. SARFRAZ
BEGAM
v.
MIRAN BAKHSH.
JAI LAL J.

488 of the Criminal Procedure Code against her father Miran Bakhsh. It appears that *Mussammat* Iqbal Begam and her husband have quarrelled with each other and are living separately and that *Mussammat* Iqbal Begam also applied for an order under section 488 in her favour, but her application was dismissed. The learned Magistrate has dismissed the application of *Mussammat* Sarfraz also on the ground that she was living with her mother and was not therefore entitled to any maintenance when "she was living apart from her father," who had offered to maintain her if her custody be given to him. In support of this view the Magistrate has relied upon *Sardar Muhammad v. Nur Muhammad* (1), and *Man Singh v. Mst. Dharmon* (2).

This is a petition for the revision of the order of the Magistrate presented by *Mussammat* Iqbal Begam on behalf of her minor child.

In *Man Singh v. Mst. Dharmon* (2), the parties were *Sikhs*. The ages of the minor petitioners in that case do not appear from the judgment but it is probable that the learned Judges were influenced by the fact that the father, who offered to maintain his children if they came and lived with him, was their legal guardian in preference to the mother who represented them in the proceedings under section 488. In the present case it is admitted by counsel for the respondent that *Mussammat* Iqbal Begam is the legal guardian of her minor daughter, and thus entitled to her custody in preference to the respondent. The condition imposed by the latter therefore was calculated to deprive the mother of her undoubted right. In *Sardar Muhammad v. Nur Muhammad* (1), in

(1) 22 P. R. (Cr.) 1917.

(2) 18 P. R. (Cr.) 1894.

which the parties were Muhammadans, it appears that the minor, on whose behalf the application was made, was a boy aged 9 years. The father offered to maintain him if the boy went to live with him. The following remarks made by the learned Judge in the concluding portion of his judgment sum up his view of the case:—

1927
 Mst. SAFRAZ
 BEGAM
 v.
 MIRAN BAKHSH.
 JAI LAL J.

“ There is nothing to show that *Mussammât Karam Bibi* (mother) or anyone else on behalf of *Sardar Muhammad* (minor) ever asked *Nur Mohammad* (father) for assistance until this application was filed and there is no reason why he should now be compelled to pay for his son's maintenance while living separately from him. The friends of the minor can move the proper Courts for an order appointing someone, other than *Nur Muhammad*, guardian of the boy, and if they succeed they would be entitled to claim maintenance from *Nur Muhammad* on his behalf ”.

It will thus be observed that the learned Judge considered that the father was entitled to decline to maintain his children if they refused to live with him without reasonable cause when he was entitled to their custody as their guardian, and that if another person had been appointed guardian of the minors, then the father was liable to maintain them while they were living with such guardian. The cases cited therefore do not support the view of the Magistrate on the admitted facts of this case.

It is not seriously contended before me that the father has not refused to maintain his daughter and the only ground on which the order of the Magistrate is sought to be supported is that the minor is not entitled to claim any maintenance because she is

1927

MST. SARFRAZ
BEGAM
v.
MIRAN BAKHSI.
JAI LAL J.

living separately from her father. This position cannot be sustained and I hold that if a minor is living with the legally constituted guardian other than the father, then an order for maintenance under section 488 cannot be refused merely on the ground that the offer of the father to maintain the child, if the latter lives with him, is not accepted. *In re Parathy Valappil Moideen* (1), and *Murgesan Mudaliar v. Sodiamma* (2), support this view.

In the case before me, it being admitted that *Mussammot Iqbal Begam* is the legal guardian of the petitioner it follows that the child is entitled to an order for maintenance against her father while living with her legal guardian.

The Magistrate appears to consider that the minor needs maintenance but he has not fixed the amount of such maintenance. Under the circumstances I accept this petition, set aside the order of the Magistrate and send the case back to him for disposal.

N. F. E.

Revision accepted.

Case remanded.

(1) (1913) 21 I. C. 469.

(2) (1913) 30 I. C. 450.