

1928

BAI MANEK,  
IN RE

Fawcett, J.

urged by the petitioner's pleader and we would therefore dismiss the application.

As regards the connected application by the wife for enhancement of the amount of maintenance, we are not disposed to interfere with the discretion exercised by the Magistrate. At the same time we must not be taken to lay down that the ordinary standard of maintenance for a Jain woman is Rs. 8 a month. We go simply on the circumstances of the present case.

No order as to costs in application No. 51 of 1928, but the opponent Bai Manek should get her costs from the petitioner in Application No. 67 of 1928.

MIRZA, J. :—I agree.

*Rule discharged.*

B. G. R.

## CRIMINAL REVISION.

*Before Mr. Justice Fawcett and Mr. Justice Mirza.*

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April 4

VITHALDAS BHURABHAI (ORIGINAL OPPONENT), PETITIONER v. BAI KASHI (ORIGINAL APPLICANT), OPPONENT.\*

*Criminal Procedure Code (Act V of 1898), sections 342, 488—Proceedings for maintenance—Examination of accused.*

Section 342 of the Criminal Procedure Code, 1898, does not apply to proceedings under section 488 of the Code.

*Bachai Kalwar v. Jamuna Kharwar*,<sup>(1)</sup> relied on.

CRIMINAL Revisional application against the order of the Sub-Divisional Magistrate, First Class, Godhra.

One Bai Kashi filed a complaint under section 488 of the Criminal Procedure Code, 1898, claiming maintenance for herself and her daughter alleging cruelty on the part of her husband Vithaldas Bhurabhai.

The allegation regarding cruelty was denied by the husband and he pleaded that he was willing to keep his wife and daughter with him. At the commencement,

\*Criminal Revision Application No. 72 of 1928.

<sup>(1)</sup> (1924) 25 Cr. L. J. 1091.

the petitioner was put into the witness box and examined. The wife and her witnesses were next examined. Thereafter without giving any opportunity to the petitioner to explain the evidence adduced against him, the Sub-Divisional Magistrate of Godhra passed an order under section 488 of the Criminal Procedure Code, 1898, awarding rupees 18, per month, as maintenance to the wife, and rupees 7, per month, to the daughter.

The husband Vithaldas (petitioner) applied to the High Court.

*U. L. Shah*, for the petitioner.

*P. B. Shingne*, Government Pleader, for the Crown.

*M. H. Mehta*, for the complainant.

FAWCETT, J. :—The only legal point taken in this application is that the Magistrate ought to have examined the petitioner under section 342 of the Criminal Procedure Code, and that his omission to do so has vitiated his proceedings.

Mr. Shah for the petitioner has contended that the word "accused" in section 342 is not confined to the case of a person accused of an offence and has referred us to various sections of the Criminal Procedure Code, where such a construction might give rise to inconvenience. Even assuming that the word "accused" is sometimes used in the Code in a wider sense than a person accused of an offence, still it seems to me perfectly clear that section 342 does not apply to a case under section 488 of the Code. The latter part of subsection (1) of section 342 speaks of the accused being questioned generally in the case "after the witnesses for the prosecution have been examined and before he is called on for his defence." Those words are appropriate to the case of an enquiry or a trial in regard to an

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offence alleged to have been committed by the accused. They are entirely inappropriate to the case of proceedings under section 488, which are more of a civil than a criminal nature, as has been pointed out in *Rozario v. Ingles*<sup>(1)</sup> and *In re Ponnammal*.<sup>(2)</sup> The obvious reason for the provisions of section 342 is the fact that a person accused of an offence cannot give evidence on oath in support of his own case, whereas a person against whom proceedings are instituted under section 488 is permitted to give evidence on oath on his own behalf, and has a full opportunity of being heard as if he were a party in a civil suit. Therefore I am clearly of opinion that section 342 does not apply to proceedings under section 488. There is a ruling of the Calcutta High Court in *Bachai Kalwar v. Jamuna Kalwarin*<sup>(3)</sup> to the same effect. As there pointed out, section 488 has been amended in 1923, so as to strike out the reference that formerly existed to "the accused"; and this supports the view that I have taken. Therefore, in my opinion, there is no adequate ground for our interfering in revision, and I would dismiss the application.

MIRZA, J. :—I agree.

*Application dismissed.*

J. G. R.

<sup>(1)</sup> (1898) 18 Bom. 468 at p. 473.

<sup>(2)</sup> (1892) 16 Mad. 234.

<sup>(3)</sup> (1924) 25 Cr. L. J. 1091.

## APPELLATE CIVIL.

*Before Sir Charles Fawcett, Kt., Acting Chief Justice, and  
Mr. Justice Mirza.*

THE MADRAS AND SOUTHERN MARATHA RAILWAY COMPANY, LTD.,  
APPLICANTS (ORIGINAL DEFENDANTS) v. JUMAKHRAM PARBHUDAS  
GUJRATHI (ORIGINAL PLAINTIFF), OPPONENT.\*

*Provincial Small Causes Courts Act (IX of 1887), section 25—High Court—  
Limits of revisional jurisdiction—Will not interfere with fair inferences—*

\* Civil Revision Application No. 270 of 1927.

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June 18