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Beaumont C. J.

It may be that under that section a police officer might give evidence that he had had a long experience amongst people who indulged in *satta* gambling in a particular district, and from that experience, supported by instances which he should be prepared to give so as to establish his means of knowledge, he was satisfied that a system or code prevailed among such persons, and he might then express an opinion (which would be relevant under the section) that the slips in question were prepared in accordance with that system or code and had a certain meaning. But the Sub-Inspector in this case does not appear to have done anything of this sort. He is not entitled merely to express the opinion that unintelligible documents found in the room of a man charged with gambling must be records of gambling transactions. It is for the Court to decide what the documents mean, and opinion on the matter can only be relevant if made so by the legislature. In my opinion, the convictions were not justified on the evidence. The application, therefore, must be allowed, the convictions set aside, and the fines repaid.

N. J. WADIA J. I agree.

*Rule made absolute.*

J. G. R.

## APPELLATE CRIMINAL.

*Before Mr. Justice Broomfield and Mr. Justice N. J. Wadia.*

ZINABHAI BHIMBHAI (ORIGINAL PETITIONER), APPLICANT v. BAI MAINI (ORIGINAL OPPONENT), OPPONENT.\*

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March 30

*Criminal Procedure Code (Act V of 1898), sections 488 and 489—Maintenance order—Application by husband for reduction of the amount of maintenance—Wife lunatic—Wife's brother appointed manager—Indian Lunacy Act (IV of 1912), sections 71, 75—Renewal of the application—No need for appointment of a guardian ad litem—Application can be proceeded with.*

In 1925, an order was passed against the petitioner under section 488 of the Criminal Procedure Code, 1898, for payment of maintenance of Rs. 19 a month to his wife.

\* Criminal Revision Application No. 28 of 1937.

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In 1936, the petitioner's circumstances having changed, he applied under section 489 of the Code for a reduction of the amount of maintenance. At that time the wife was of unsound mind. An inquiry was made into the state of her mind and on the application of her brother to the District Judge under the Lunacy Act, 1912, he was appointed manager of her estate under section 71 of that Act. Thereupon the petitioner renewed the application under section 489. He described it as an application against Bai Mani (wife) represented by her guardian, her brother. The Magistrate took the view that the proceedings were proceedings of a criminal nature and, therefore, the Court had no power to appoint a guardian *ad litem* and a guardian or manager appointed under section 71 of the Lunacy Act, 1912, was not entitled to speak on the lunatic wife's behalf. The application was rejected. The petitioner applied in revision to the High Court.

*Held*, setting aside the order and directing that the application be proceeded with according to law, that there was no need for the appointment of a guardian *ad litem* as the manager appointed by the District Judge was the proper person to state the case for the wife and there was nothing in the Criminal Procedure Code, 1898, which prevented the Magistrate from taking his evidence or which required that the wife should be otherwise represented.

*Appichi Goundan v. Kutti Yammal*,<sup>(1)</sup> distinguished.

CRIMINAL REVISION APPLICATION against the order passed by Thakorlal C., Magistrate, First Class, Bulsar.

Application under section 489 of the Criminal Procedure Code.

The facts material for the purposes of this application are stated in the judgment of Broomfield J.

*R. G. Naik*, for the applicant.

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

No appearance for the Crown.

BROOMFIELD J. This is an application for revision of an order by the First Class Magistrate, Bulsar, rejecting the petitioner's application under section 489 of the Criminal Procedure Code for an alteration of the amount of maintenance which the petitioner has been ordered to pay to his wife. The original order for payment of maintenance of Rs. 19 a month to the petitioner's wife Bai Mani was made in January, 1925. The allowance was duly paid for ten years. Thereafter the

<sup>(1)</sup> (1924) 48 Mad. 388.

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petitioner's circumstances changed, as he alleges, and he applied under section 489 for a reduction of the amount of maintenance. At that time it was found that Bai Mani was of unsound mind. The proceedings were kept pending while an inquiry was made into the state of her mind. Ultimately her brother made an application to the District Judge under the Indian Lunacy Act and was appointed manager of her estate under section 71 of that Act. The application made by him shows that his object in applying was *inter alia* to enable him to recover the amount of maintenance payable to Bai Mani under the Magistrate's order.

After the appointment of the manager for Bai Mani's estate, the petitioner renewed his application under section 489. He described it as an application against Bai Mani represented by her guardian. The Magistrate took the view that as these proceedings under Chapter XXXVI of the Criminal Procedure Code are criminal proceedings or proceedings of a criminal nature, the Court has no power to appoint a guardian *ad litem* and a guardian or manager appointed under section 71 of the Indian Lunacy Act is not entitled to speak on the lunatic wife's behalf. He accordingly held that he had no alternative but to reject the application.

The learned Magistrate's decision has been supported before us on the following grounds. It is conceded that proceedings under Chapter XXXVI are not strictly speaking criminal. Nevertheless, the procedure is as laid down in the Criminal Procedure Code and not as laid down in the Civil Procedure Code, and there is no provision for hearing any party by his or her guardian. If it were a civil proceeding under Order XXXII, rule 3, the Court would have to appoint a guardian *ad litem* in spite of the fact that a guardian or manager may have been appointed for a lunatic party under the Indian Lunacy Act. But under the Criminal Procedure Code there is no provision for appointing a guardian *ad litem*.

Reliance has been placed upon *Appichi Goundan v. Kutti Yammal*.<sup>(1)</sup> That was a case where an application for maintenance had been made against a husband under section 488 and the husband was found to be of unsound mind. The Court held that by analogy the provisions of Chapter XXXIV of the Criminal Procedure Code, in particular section 464, ought to be applied and the proceedings stayed indefinitely until such time as the lunatic husband was capable of understanding the proceedings.

But, in our opinion, an application under section 488 for maintenance against a husband or father stands on a different footing altogether from an application under section 489 by the person who has been ordered to pay maintenance. Clause (6) of section 488 provides that all evidence shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader. As pointed out in *Appichi Goundan v. Kutti Yammal*,<sup>(1)</sup> the result of proceedings under the Chapter may possibly be that an order of imprisonment may be made against a person disobeying the order. It is easy to understand, therefore, that where the husband or father becomes incapable of understanding the proceedings there may be no alternative but to stay those proceedings until he recovers his sanity. But the same considerations do not apply where it is the person in whose favour an order has been made who becomes insane. It is nowhere provided that the person claiming to be entitled to maintenance should necessarily be heard in person. There is no provision in section 489 requiring the issue of a notice to the wife or child. Under section 488 it may be ordered that the maintenance should be paid to such person as the Magistrate from time to time directs. Section 490 provides that a copy of the order of maintenance shall be given without payment to the person in whose favour it is

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made, or to his guardian, if any, or to the person to whom the allowance is to be paid. These may be said to be indications that the guardian of a minor child or of a lunatic wife for instance may be recognised as in a sense a party to the proceedings under this Chapter.

No doubt in accordance with the maxim *audi alteram partem* the Court may properly require that the point of view of the wife or child as the case may be should be properly placed before it in the case of an application under section 489 for reduction of the amount of maintenance. But the Court is not fettered by any technical rules as to representation or as to the kind of evidence which it may accept as sufficient. There is no need for the appointment of a guardian *ad litem*. Section 75 of Act IV of 1912 provides that every manager of the estate of a lunatic may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic. As I have said, the application was made by the wife's brother to the District Court mainly for the purpose of collecting the amount of maintenance made payable by the husband. Under the circumstances the manager appointed by the District Judge is obviously the proper person to state the case for the wife. There is nothing in the Code which prevents the Magistrate from taking his evidence. Nor is there anything in the Code which requires that any additional or different evidence should be produced or that the wife should be otherwise represented. We think the Magistrate took too narrow a view of his powers under Chapter XXXVI in holding that he could not proceed with this application.

We, therefore, make the rule absolute, set aside the order rejecting the application and direct that it be proceeded with according to law.

*Rule made absolute.*

J. G. R.