

CALCUTTA HIGH COURT

Purnasashi Devi

Vs.

Nagendra Nath Bhattacharjyee

Criminal Ref. No. 34 of 1950

(Das Gupta and Lahiri, JJ.)

16.05.1950

JUDGMENT

Das Gupta, J.

1. This reference was made by the Sessions Judge of Bardwan recommending that an order passed by the learned Magistrate, Asansol, directing payment of Rs. 60-8-0 per month and 11 Sali Bhati rice and 2 Sali of other Variety of rice or its money equivalent per year to big wife Sm. Purnagashi Devi for her maintenance and the maintenance of his legitimate child by her should be set aside.

2. Three grounds have been put forward by the learned Judge for big recommendation. The first is that as the learned Magistrate was of the view that the maintenance had been paid but the rate was inadequate, it could not in law be said that the husband has neglected or refused to maintain his wife. In my judgment, this ground cannot prevail. When the law says "neglects or refuses to maintain", it cannot but mean "neglects or refuses to maintain properly." Suppose one rupee was paid for the maintenance of a wife for a month, that would be paying some amount of maintenance, but it would be ridiculous to suggest that that in such maintenance which would stand in the way of the operation of Section 438, Criminal Procedure Code. In this case, the learned Magistrate found that the maintenance which had been given by the husband was inadequate. He had jurisdiction to pass proper order under Section 488(1), Criminal Procedure Code.

3. The second ground is that "maintenance" includes food, clothing and lodging and it does not include cost of education. Even if the costs of education were left out, it does not seem to me that the amount ordered by the learned Magistrate in this case could be considered to be too high. But I do not see why the cost of ordinary education should not in the case of a middle class family be considered to form part of maintenance. It may be that when the case of a person of the cultivator

class is being considered, any education more than primary education should not be considered to form part of maintainable, but the case of middle class families is different. I am unable to agree with the learned Judge that in no case can maintenance be thought to include anything more than food, clothing and lodging.

4. The third ground is that while Section 488, Criminal Procedure Code empowers the Magistrate to fix a monthly allowance for the maintenance, the learned Magistrate had acted illegally in directing annual payment of the paddy. In my opinion, the learned Judge was right in this criticism of the learned Magistrate's order. The operative portion of Section 488, Criminal Procedure Code is in these words :

" . . . order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding one hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs."

5. There is no provision for an order of payment of annual allowance, or any kind of annual payment.

6. It was contended by Mr. Dutt, on behalf of the husband that as the son on whose behalf maintenance has been asked for is age 17 or 18 or 19, he does not come within the meaning of "child" under Section 488, Criminal Procedure Code. If it was intended to limit the maintenance to sons or daughters upto a certain age, there seems no reason why the Legislature did not make use of explicit words to give effect to that intention. It seems to me that the word "child" has been deliberately used to leave the Courts free to order maintenance for such sons and daughters as are unable to earn livelihood for themselves, having due regard to their class of society to which they belong and other surrounding circumstances. The fact, therefore, that the son is 17 or 18 or 19 is, in my opinion, no ground for refusing maintenance on his account.

7. In this view of the matter, I would maintain the order passed by the learned Magistrate with this modification only that I would order payment of a lump sum money per month instead of Rs. 60-8 0 per month and 11 Sali Shati rice and 2 Sail of other variety of rice or its money equivalent per year as ordered by him. On consideration of all the circumstances, it seems to me that the proper order to make is that the petitioner must pay Rs. 90 per month on account of the maintenance of his wife and child to his wife Sin. Purna Sashi Devi and I would order accordingly. This order will take effect from the date of the petition under Section 483, Criminal Procedure Code.

8. The reference is disposed of in these terms.

Lahiri, J.

9. I agree.

Order accordingly.