

BOMBAY HIGH COURT

Shaikh Ahmed Shaikh Mahomed

Vs

Bai Fatma

(John Beaumont, Kt., C.J. Wassoodew, J.)

03.08.1942

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an application in revision against an order made by the Sessions Judge of Surat upholding the order of the Sub-divisional Magistrate directing the applicant to pay maintenance to his son and daughter under Section 488 of the Criminal Procedure Code. The daughter is aged twenty-one, and the point, which is taken on this application, is that Section 488 is confined to minors. The section provides that if any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, an order can be made.

2. We were referred by Mr. Thakor to the case of *Krishnaswami Ayyar v. Chandravadana*¹ where the learned Judge expressed the opinion that, as the word "child" has not been defined in the Criminal Procedure Code, it means in Section 488 a person who has not reached full age. A similar opinion was expressed by a learned Judge of the Calcutta High Court in *Hemantakumar Banerji v. Manorama Debee*²

3. The word "child" according to its use in the English language has different meanings, according to the context. If used without reference to parentage, it is generally synonymous with the word "infant", and means a person who has not attained the age of majority. Sometimes it may be used in a context which shows that it refers to quite young children, for instance, a notice that "children are not admitted to this enclosure" would hardly be held to apply to young persons of eighteen to twenty; it would mean children who are too young to look after themselves. Where the word "child" is used with reference to parentage, it means a descendant of the first degree, a son or a daughter, and has no reference to age. In certain contexts it may include descendants of more remote degree, and be equivalent to "issue". But, at any rate, where the word "child" is used in conjunction with parentage, it is not concerned with age. No one would suggest that a gift "to all my children" or "to all the children of A" should be confined to minor children. In Section 488 of the Criminal Procedure Code the word is used with reference to the father. There is no qualification of age; the only qualification is that the child must be unable to maintain itself. In my opinion, there is no justification for saying that this section is confined to children who are under the age of majority.

4. On the merits of the case, inasmuch as the daughter is a pardmashin girl, I think the learned Judge was right in saying that she is a child unable to maintain herself. The boy is aged only fourteen, and although he has been sent abroad, that seems to me to afford no ground for relieving his father from the obligation of maintaining him.

5. The application, therefore, must be rejected.

Wassoodew, J.

1. I agree.

Cases Referred.

1(1913) I.L.R. 37 Mad. 565

2(1935) I.L.R. 62 Cal. 639