

(1961) 10 KL CK 0020

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 134 of 1961

Areekkal Abdurahiman Musaliyar

APPELLANT

Vs

Neliyaparambath Ayissu

RESPONDENT

Date of Decision : 30-10-1961

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488

Citation : AIR 1962 Ker 234 : (1961) 5 KLJ 1363

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : K.A. Varghese, for the Appellant; M.C. Sridharan, for the Respondent

Judgement

P. Govinda Menon, J.—This is a revision petition from the order of the Munsiff-Magistrate of Quilandy ordering the revision petitioner to pay maintenance of Rs. 15/- per mensem to his wife from the date of the petition till 11-11-1960, the date of expiry of the period of Iddat and Rs. 10/- per mensem to his child from the date of the petition.

2. It is contended that the fact that he had divorced his wife prior to the filing of the petition deprived the Magistrate of jurisdiction u/s 488 Cr. P. C., to order maintenance to the wife. A reference to Section 488 would show that if on the date on which the application is made the relationship of husband and wife exists the Magistrate will have jurisdiction to pass an order. The proper date to be considered is the date on which the application is made. If the fact of divorce comes to the knowledge of the wife only after the filing of the petition, she may be entitled to file a petition.

3. Here in this case the wife has clearly admitted that she knew about the divorce before the date of the petition. Therefore the application was not competent at the time it was made as she was no longer the wife of the applicant. She may be entitled to claim maintenance for the period of Iddat in a civil court, but she is not entitled to invoke the provisions of Section 488, Cr. p. C

This is the view that is taken in the case in Ahmad Giri v. Mst. Begh AIR 1955 J and K I. I am in respectful agreement with this view. The order awarding maintenance to the wife is, therefore, set aside.

4. When the mother has the custody of the child, she is entitled to claim maintenance for the child and the award of maintenance to the child is, therefore, correct and calls for no interference That portion of the order is therefore, confirmed. With this modification the revision petition is dismissed.