

**(1923) 03 MAD CK 0084**  
**In the Madras High Court**

Maddu Venkayya

APPELLANT

Vs

Maddu Paidamma alias Kamireddi Paidamma and Another

RESPONDENT

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**Date of Decision :** 12-03-1923

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 488

**Citation :** AIR 1923 Mad 707 : (1923) ILR (Mad) 721 : 73 Ind. Cas. 944 :  
(1923) 18 LW 132 : (1923) 45 MLJ 104

**Hon'ble Judges :** Ayling, J

**Bench :** Division Bench

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**Judgement**

Ayling, J.—The petitioner in this case was directed by the Sub-Divisional Magistrate of Narasapatam u/s 488 of the Criminal Procedure Code to pay maintenance at the rate of Rs. 3 a month for his illegitimate child. He subsequently brought a suit in the District Munsif's Court of Yellamanchilli and succeeded in securing final decision on appeal to the Subordinate Judge of Vizagapatam to the effect that the child was not his. On this he applied to the Sub Divisional Magistrate drawing his attention to the decision of the Subordinate Judge and making the following prayer : "Your petitioner, therefore, prays your honourable Court to abstain from giving further effect to the order dated 21st May 1918, the order awarding maintenance, in view of the decree and judgment of the Additional Subordinate Judge declaring that the second counter petitioner was not born to the petitioner and that the petitioner is not bound to maintain her." This petition has been returned with the following endorsement : "The petitioner is free to seek whatever remedy he likes against the order of this Court which cannot be reconsidered." The order of the Sub Divisional Magistrate is obviously based on a misconception. There is no question of reconsidering the order of maintenance for which no provision is made in the Code, but, where the relationship on which the maintenance order is based has been declared by the final decree of a competent Civil Court not to exist, it is open to the person adversely affected thereby to ask the Magistrate to abstain from giving any further effect to his order of maintenance. This has been laid down in Mahomed

Abid Ali Kumar Kadar v. Lubdan Sahiba ILR (1886) C. 276 and it is in accordance with the view of the law taken by a Bench of this Court in Mayarkara Illath Narayanan Moosad Vs. Koori Kathil Itticherry Amma, , although in that case the learned Judges were dealing with a maintenance order passed after the decision of the Civil Court.

2. The order of the Sub Divisional Magistrate is therefore set aside and he is directed to restore the petition to file and dispose of it in the light of the above remarks.