

(1924) 10 MAD CK 0082
In the Madras High Court

Meenakshi Ammal

APPELLANT

Vs

Karuppanna Pillai alias Muthuswami Pillai

RESPONDENT

Date of Decision : 29-10-1924

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 489

Citation : AIR 1925 Mad 491 : (1925) 21 LW 142

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In this case, a rather important question has been raised, under chapter 36 of the Criminal Procedure Code with reference to the maintenance of a child. The petitioner was the mother of two children, a girl who is now aged about 14 and a boy of 10 years. When they were young, she had obtained from the Magistrate an order for their maintenance, from their illegitimate father, the counter-petitioner, at the rate of Rs. 10 a month. The girl has been recently married; but it is not clear whether she has joined her husband or not. On the application of the father, the Magistrate has reduced the maintenance given previously to a sum of Rs. 6 for the boy alone, cancelling altogether the maintenance allowed to the girl. He does not give any reasons for his order but merely says : "The girl is not now entitled to maintenance". I take it that his view is, that as the girl is married she is no longer entitled to maintenance. The question is whether this is correct. A similar question arose once before in this Court, in the case reported in 2 Weir 650 ; but their Lordships did not give any definite ruling on it, as they were able to rely upon an express undertaking by the husband of the child, to maintain his wife, to justify the cancellation of the maintenance. It seems to me that the question really turns upon whether the altered circumstances are such that the child has become able to maintain herself. If she has become able to maintain herself by reason of her marriage and ceased to depend on the original maintenance, I would be prepared to hold that the cancellation u/s 489 of the Criminal Procedure Code would be the proper order to make ; but if in spite of her marriage the girl still remains unable to

maintain herself either because her husband is too poor to maintain her, or for any other good reason, the father's liability to maintain the child would still exist, u/s 488. This case, therefore, must be considered from that point of view. The Magistrate should enquire and find out whether the husband is able to maintain the girl and whether she has therefore ceased to be under the difficulty of being unable to maintain herself. If she has, then the Magistrate's order would be right. But, if the Magistrate finds that the girl is still unable to maintain herself, the order of cancellation will not be right.

2. I therefore, set aside the order of the Magistrate and send the case back to him, for passing fresh orders, in the light of the above observations..

3. It was contended that u/s 489 the Magistrate could not altogether cancel the order of maintenance, but could only alter it or reduce it. I do not think the word "alter" is used in any such restricted meaning. The reduction of the maintenance to nothing would also come within the meaning of the word "alteration". I therefore reject that argument.

3. The counter-petitioner will pay the costs of this petition to the petitioner.