A

NANAK CHAND

v.

SHRI CHANDRA KISHORE AGARWALA AND OTHERS

May 20, 1969

B [S. M. SIKRI AND V. RAMASWAMI, JJ.]

Criminal Procedure Code 1898 *s.* 488—*Expression "child"—Whether includes only minor children—Whether Section impliedly repealed by s.* 4 *of Hindu Adoptions and Maintenance Act* 78 *of* 1958—*If educational expenses to be taken into account for determining quantum of maintenance.*

C The appellant's four childern, the respondents in the appeal, two of whom were majors and two were minors, filed an application under s. 488 of the Criminal Procedure Code in September, 1963 for an order requiring the appellant to pay them maintenance. The Trial Court allowed the application and fixed the monthly amounts to be paid as maintenance to each of the children. The appellant's revision application was dismissed but one filed by the respondents was allowed whereby the Additional Sessions Judge submitted the case to the High Court with recommendations to enhance the maintenance allowance. The High Court accepted D the reference and thereafter, on an application by the appellant granted a certificate under Art. 134(1)(c) for an appeal to this Court.

It was contended on behalf of the appellant that (i) s. 488 Cr. P.C. was impliedly repealed by s. 4 of the Hindu Adoptions and Maintenance Act 78 1956 insofar as it applied to Hindus; (ii) that the word "child" in s. 488 means a minor; and (iii) that the maintenance fixed for two of E the major children was based on wrong principles and was excessive inasmuch as expenses for education had been taken into consideration.

HELD : Dismissing the appeal :

(i) There was no inconsistency between Act 78 of 1956 and s. 488 Cr. P.C. Both could stand together. The Act of 1956 is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. F The law was substantially similar before when it was never suggested that there was any inconsistency with s. 488 Cr.P.C. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. [568 A-B]

Ram Singh v. *State,* A.I.R. 1963 All. 355; *Mahabir Agarwalla* v. *Gita Roy,* (1962) 2 Cr. L.J. 528; and *Nalini Ranjan* v. *Kiran Rani,* A.I.R. G 1965 Pat. 442; approved.

(ii) The word "child" in s. 488 does not mean a minor son or daughter and the real limitation is contained in the expression "unable to maintain itself"

If the concept of majority is imported into the section, a major child H who is an imbecile or otherwise handicapped will fall outside the purview of this section. If this concept is not imported, no harm is done for the section itself provides a limitation by saying that the child must be unable to maintain itself. The older a person becomes the more difficult it would be to prove that he is unable to maintain himself. [569 F—H]

The Commissioner had notice of whole of the suit and of the claim made by the plaintiff in the case. He was afforded an opportunity to resist the suit and, in fact, resisted it but later gave up the fight and agreed to go out of the suit. In these circumstances, it will be wrong to hold that the decree was void because the Commissioner was not given a notice of the compromise petition. [592 C]

State Wakf Board, Madras v. *Abdul Azeez Sahib & Ors.* A.I.R. 1968 Mad 79, distinguished.

Muzafar Ahmed v. *Indra Kumar Das & Ors.* 77 C.L.J.. 159, *Benoy Kumar Acharjee Choudhury & Ors.* v. *Ahamma Ali & Anr.* 46 C.W.N. 339 and *The Commissioner of Wakfs, Bengal* v. *Shahbzada Mohammed Zehangir Shah,* 48 C.W.N. 157, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 579 of 1966.

Appeal by special leave from the judgment and order dated August 20, 1964 of the Calcutta High Court in Civil Rule No. 1715 of 1961.

D. N. Mukherjee, for the appellant.

B. C. Mitra and *S. C. Majumdar,* for respondent No. 1.

The Judgment of the Court was delivered by

Hidayatullah, C.J. This is an appeal by special leave from the judgment and order of the High Court of Calcutta, August 20, 1964, in an application under s. 115 of the Code of Civil Procedure, reversing the judgment of the Subordinate Judge, Howrah. The facts are as follows :

One Haji Abdul Karim, grandfather of respondents 2 to 4 executed a Wakf al-al-aulad on March 30, 1917. He constituted himself as the first Mutwali and named his two sons and widow as Mutwalis after his own death. The Wakf provided for the benefit of the family and after the extinction of all the family a scheme for feeding the poor. On February 14, 1956 the present appellant Ayesha Bibi filed a suit claiming 1/16th of the property as a sharer after the death of her husband Abdul Hamid. This claim was made against respondents 2 to 4 who were the Mutwalis. Ayesha Bibi joined the Commissioner of Wakfs, West Bengal as a defendant to the suit. The suit was filed in the Court of Munsif, Howrah and reliefs claimed were a declaration that the Wakf was invalid, inoperative and void and that its enrolment in the Wakf Office was wrongly done and was of no avail. She also asked for a permanent injunction restaining the Commissioner of West Bengal and other respondents from interfering with the possession of the property. The Commissioner of Wakfs appeared in answer to the notice of the suit and filed a written-statement on April 4, 1956. He contended that the properties were governed by the Wakf which was valid and also that he was entitled to a notice under s. 80 of

A applicants. The Additional Sessions Judge submitted the case to the High Court with the recommendation to enhance the maintenance allowance of the applicants in terms of the proposals made by him. The Additional Sessions Judge observed that the maintenance under s. 488 did not include the costs of college education, and therefore he did not propose to allow Chandra B Kishore and Ravindra Kishore the expenses of their college education. But taking into consideration the income of the respondent and the status of the family, the Additional Sessions Judge proposed to allow Chandra Kishore and Ravindra Kishore Rs. 100 p.m. each as maintenance allowance until they finished their courses of M.Com. and M.B.B.S., respectively. He further pro- C posed to allow to Rakesh Kumar and Shashi Prabha each a monthly maintenance allowance of Rs. 50 until Shashi Prabha was able to earn or was married, whichever was earlier, and until Rakesh Kumar was able to maintain himself.

The High Court accepted the reference made by the learned Additional Sessions Judge and dismissed the criminal revision filed D by the respondent. The High Court granted the certificate under art. 134(1)(c) of the Constitution because there is conflict of opinion on the question of the interpretation to be given to the word 'child' in s. 489, Cr. P.C.

The learned counsel for Nanak Chand has raised three points E before us : first, that s. 488, Cr. P.C. stands impliedly repealed by s. 4 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956)—hereinafter referred to as the Maintenance Act—insofar as it is applicable to Hindus; secondly, that the word 'child' in s. 488 means a minor; and thirdly, that the maintenance fixed for Chandra Kishore and Ravindra Kishore was based on wrong F principles and was excessive inasmuch as expenses for education have been taken into consideration.

Section 4 of the Maintenance Act reads :

> "4. Save as otherwise expressly provided in this Act,—
>
> G (a) .....
>
> (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act."

H The learned counsel says that s. 488 Cr. P.C., insofar as it provides for the grant of maintenance to a Hindu, is inconsistent with Chapter III of the Maintenance Act, and in particular, s. 20, which provides for maintenance to children. We are unable to

see any inconsistency between the Maintenance Act and s. 488, Cr. P.C. Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with s. 488, Cr. P.C. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in *Ram Singh* v. *State*(1), before the Calcutta High Court in *Mahabir Agarwalla* v. *Gita Roy*(2), and before the Patna High Court in *Nalini Ranjan* v. *Kiran Rani*(3). The three High Courts have, in our view, correctly come to the conclusion that s. 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in s. 488, Cr. P.C.

On the second point there is sharp conflict of opinion amongst the High Court and indeed amongst the Judges of the same High Court. In view of this sharp conflict of opinion we must examine the terms of s. 488 ourselves. Section 488(1) reads as follows :

> "488(1). If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such manthly rate, not exceeding five 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."

We may also set out sub-s. (8) of s. 488 because some courts have placed reliance on it :

> "488(8). Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child."

The word 'Child' is not defined in the Code itself. This word has different meanings in different contexts. When it is used in

(1) A.I.R. [1963] All. 355. (2) [1962] 2 Cr. L.J. 528.
(3) A.I.R. [1965] Pat. 442.

correlation with father or parents, according to Shorter Oxford Dictionary it means :

> "As correlative to parent. 1. The offspring, male or female, of human parents."

Beaumont, C.J., in *Shaikh Ahmed Shaikh Mahomed* v. *Ba Fatma*(1) observed :

> "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....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 s. 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."

We agree with these observations and it seems to us that there is no reason to depart from the dictionary meaning of the word.

As observed by Subba Rao, J., as he then was, speaking for the Court in *Jagir Kaur* v. *Jaswant Singh*(2), "Chapter XXXVI of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose." If the concept of majority is imported into the section a major child who is an imbecile or otherwise handicapped will fall outside the purview of this section. If this concept is not imported, no harm is done for the section itself provides a limitation by saying that the child must be unable to maintain itself. The older a person becomes the more difficult it would be to prove that he is unable to maintain himself. It is true that a son aged 77 may claim maintenance under the section from a father who is 97. It is very unlikely to happen but if it does happen and the father is

(1) I.L.R. [1943] Bom. 38, 40. (2) [1964] 2 S.C.R. 73, 84.

able to maintain while the son is unable to maintain himself no harm would be done by passing an appropriate order under s. 488. We cannot view with equanimity the lot of helpless children who though major are unable to support themselves because of their imbecility or deformity or other handicaps, and it is not as if such cases have not arisen. As long ago as 1873, Pearson, J. *In the matter of the Petition of W. B. Todd*(1) had to deal with a major son who was deaf and dumb, and he had no hesitation in granting an order of maintenance. The same conclusion was arrived at by Chevis, J., in 1910 in *Bhagat Singh* v. *Emperor*(2) and he allowed maintenance to a young man of about 20 who was very lame having a deformed foot. We have seen no case in which a man of 77 has claimed maintenance and we think, with respect, that unnecessary emphasis has been laid on the fact that it might be possible for a man of 77 to claim maintenance.

It is not necessary to review all the case law. The latest judgment which was brought to our notice is that of the Madras High Court in *Amirithammal* v. *Marimuthu*(3) in which Natesan, J. has written a very elaborate judgment. He has referred to all the Indian cases and a number of English cases and statutory provisions both in England and in India. We are unable to derive any assistance from the statutory provisions referred to by him or from the English Law on the point. He relied on the use of the word "itself" in s. 488 as showing that what was meant was a minor child. We are unable to attach so much significance to this word. It may well be that it is simpler or more correct to use the word "itself" rather than use the words "himself or herself."

We may mention that Das Gupta, J., in *Smt. Purnasashi Devi* v. *Nagendra Nath*(4) and Mudholkar, J., in *State* v. *Ishwarlal*(5) came to the same conclusion as we have done.

In view of the reasons given above we must hold that the word "child" in s. 488 does not mean a minor son or daughter and the real limitation is contained in the expression "unable to maintain itself."

Coming to the third point raised by the learned counsel we are of the view that the learned Additional Sessions Judge and the High Court were right in taking into consideration the existing situation, the situation being that at the time the order was passed Chandra Kishore was a student of M.Com. and Ravindra Kishore was a student of M.B.B.S. course. We need not decide in this

(1) [1873] 5 N.W.P. High Court Reports 237. (2) 6 I.C. 960.
(3) A.I.R. [1967] Mad. 77. (4) A.I.R. [1950] Cal. 465.
(5) I.L.R. [1951] Nag. 474.

A case whether expenses for education can be given under s. 488 because no such expenses have been taken into consideration in fixing the maintenance in this case. It has not been shown to us that the amount fixed by the learned Additional Sessions Judge and confirmed by the High Court is in any way excessive or exorbitant.

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In the result the appeal fails and is dismissed.

R.K.P.S. *Appeal dismissed.*