

**(1916) 11 CAL CK 0002**

**Calcutta High Court**

**Case No:** Rev. No. 891 of 1916

Nanda Narain Newar

APPELLANT

Vs

Manmaya Kamini

RESPONDENT

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**Date of Decision:** Nov. 22, 1916

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### **Judgement**

1. In this case it appears that proceedings were taken under sec. 488 of the Code of Criminal Procedure against the Petitioner before us as being the father of a certain illegitimate child. Having heard and considered the evidence adduced by both parties the Magistrate on the 29th June 1916 made his final order in the case holding that the complainant's mother had failed to establish the paternity of the child. On the 10th July after further hearing the parties he proceeded to review his order of the 29th June and made an order directing the Petitioner to pay the sum of Rs. 3 per month as maintenance in respect of the child in question. The question that is raised in this Rule is whether it was competent to the Magistrate to review his order of the 29th June. Having considered the matter we are of opinion that the Code of Criminal Procedure does not authorise a Magistrate to review the final order made by him in a proceeding under sec. 488 of that Code. In sec. 369 of the Code it is laid down that no Court other than the High Court when it has signed the judgment shall alter or review the same, except as provided in certain sections or to correct clerical errors. The case now before us does not come within any of the exceptions contemplated in sec. 369. Whether sec. 369 which appears in Chap. 26 of the Code applies in terms to judgments pronounced in proceedings under sec. 488 or applies only to cases of judgments in trials terminating in either conviction or acquittal it is not necessary for us to decide. Even if it does not apply in terms in our opinion the principle laid down in that section does apply, as there is no doubt that proceedings under sec. 488 are judicial proceedings and that the final order or the reasons given for the final order in any such proceeding is in effect a judgment.

2. That being so, and our opinion being that the principle enunciated in sec. 369 applies to judgments passed in proceedings under sec. 488, it follows that we must make this Rule absolute and set aside the order made by the learned Magistrate on

the 10th July 1916. If the mother of the child is dissatisfied with the order made on the 29th June it may be that she has other remedies, and if so, it will be open to her to follow them.