

(1935) 01 CAL CK 0005**Calcutta High Court****Case No:** None

Hemanta Kumar Banerjee

APPELLANT

Vs

Monorama Debi

RESPONDENT

Date of Decision: Jan. 2, 1935**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 488

Citation: AIR 1935 Cal 488**Hon'ble Judges:** Nasim Ali, J**Bench:** Division Bench**Judgement**

@JUDGMENTTAG-ORDER

Nasim Ali, J.

This Rule was issued upon the District Magistrate of 24 Parganas and the Opposite Party Monorama Debi to show cause why the order of the Police Magistrate of Alipore, dated 21st August 1934, refusing the petitioner's prayer for exempting him from further payment of the monthly allowance for the maintenance of the opposite party's child, Sambhu Nath, u/s 488, Criminal P. C, should not be set aside. The first ground urged in support of the rule is that Sambhu Nath is no longer a child within the meaning of Section 488, Criminal P. C, inasmuch as he is now 17 years old and is quite competent to earn his livelihood. It is argued by the learned Advocate on behalf of the petitioner that the child, as contemplated by Section 488, is an infant who has not yet attained puberty. The word "child" has not been defined in the Criminal Procedure Code. In the absence of any statutory definition or anything to the contrary in the Act, I am inclined to hold that "child" is a person who is not competent to enter into any contract or to enforce any claim under the law. Under the Majority Act, a person who has not attained the age of majority, that is 18, is incompetent to contract and is therefore a child within the meaning of the section: see Krishna Swami Iyer v. Chandra Vadana 1914 Mad 594 and Mt. Shanoo Devi v. Daya Ram 1933 Lah 1026. I am therefore unable to accept this contention. The

second point that was urged by the Advocate was that the child is not now unable to maintain himself and consequently the petitioner is no longer bound under the law to maintain him. The Advocate argues that though the boy is now reading in the school, the petitioner is not bound to keep him in the school as Section 488, Criminal P.C., does not confer upon the child the right to better his prospects by staying in the school at the expense of the father. It was also argued that he is now sufficiently grown up to earn his own livelihood by working in some factory. It appears that the boy was examined as a Court witness. In his deposition he stated as follows:

I read in the 2nd Class of an English High School. It is out of the question for me to get an employment suitable to my status in life, as I am only a student of the 2nd class of a High School.

2. This statement was not challenged in cross-examination by the petitioner. The petitioner was also examined as a Court witness. He did not in his evidence contradict the statement of the boy. Under these circumstances I am not in a position to say that the boy is now able to maintain himself. The Advocate also contended that there is no evidence in this case that the boy ever made any attempt to get any employment and consequently it could not be said that he failed to get any employment. The petitioner as well as the boy belong to Bhadraloke class. It cannot be expected that he would make an attempt to earn his livelihood by working as a cooly. As he is now in the school the petitioner did not suggest either in his evidence or during the cross-examination of the boy that regard being had to the social position of the petitioner as well as of the boy it could be expected that at this age the boy would be able to find a suitable employment, even if he made any attempt in that direction. This contention has therefore no force. The Rule is accordingly discharged.