

Trinayant Dasee Vs Srichandan Bhuiyah and Another

Court: Calcutta High Court

Date of Decision: July 1, 1912

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 488

Citation: 15 Ind. Cas. 603

Hon'ble Judges: Teunon, J; Chitty, J

Bench: Division Bench

Judgement

1. This is an appeal by the plaintiff, Bhuinyani Trinayani Dasee, in a suit which was brought by her against her husband for maintenance.

2. The only point which was argued before us was whether this suit was, in any way, barred by the fact, which is undisputed, that the lady had

obtained an order from the Magistrate, u/s 488 of the Code of Criminal Procedure for the payment to her of maintenance of Rs. 50 a month. That

sum is the highest which a Magistrate can award under that section and, in this Civil suit, the lady asked for Rs. 250 a month with arrears, for the

provision of a proper residence and, further, that the amount allowed might be made a charge upon her husband's properties. The last order is one

which, of course, the Magistrate had no jurisdiction to pass.

3. We adjourned the appeal for a fortnight to enable the parties to come to terms. They had not, however, been able to do so, and must, therefore,

pass orders in the case.

4. We were referred to a number of decisions which, generally speaking, were to the effect that a Civil Court cannot interfere with the orders of a

Criminal Court in the matter of maintenance. These cases, however, have no bearing on the question which is before the Court in the present case

which is whether, although an order has been made by the Magistrate, the Civil Court has power to make a further order, in the matter of

maintenance. We are not aware of any provision of law which excludes the jurisdiction of the Civil Court in such a case, and we, therefore, cannot

agree with the learned Subordinate Judge that this suit is barred by the order which was passed by the Magistrate. It is true that the plaintiff cannot

have that order set aside, but there seems to be no reason why she should not have a separate order for additional maintenance, if the Civil Court

thinks that Rs. 50 a month is not sufficient, or an order from (he Civil Court for a sum which would include and give credit for the 50 rupees

allowed by the. Magistrate.

5. We accordingly set aside the order of the Subordinate Judge and remand the case to his Court for him to inquire and determine what would be

the proper amount to allow this lady as maintenance either in addition to or, more properly, inclusive of the sum allowed by the Magistrate. The

Subordinate Judge will be at liberty to pass an order making the amount allowed a charge on the properties of the husband. The appellant will have

her costs of this hearing. We fix the hearing fee at five gold mohurs.

6. If the plaintiff-appellant had been compelled to pay the Court-fee on this appeal, she would have been entitled to a refund of the amount but, as

she filed the appeal in forma pauperis, no fee has in fact been paid, and, therefore, no order is necessary for a refund.

7. Let the record be sent down at once.