

Empress of India Vs Sri Lal and Others

Court: Allahabad High Court

Date of Decision: Feb. 9, 1880

Citation: (1880) ILR (All) 694

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

On the facts as stated to us in this reference and as explained at the hearing, it is quite clear that the convictions under

Sections 372 and 373 cannot stand. The offence apparently committed by the accused was cheating. There can be no doubt of the immorality of

the purpose and motive on the part of the accused, but I hesitate to say that their conduct was unlawful in any absolute sense. On discovery the

girls, who by fraud had succeeded in becoming wives, and who had in the meantime communicated loathsome disease to the unfortunate men who

had married them, were turned out of their so-called husbands' houses, and it would appear from what was stated at the hearing that their course

of life thereafter was that of prostitution, so that what began in fraud to the husbands has ended in the permanent degradation of the wives

themselves. Again, the girls appear to have been parties to the fraud committed on their husbands, having been duly instructed beforehand by the

accused as to the part they were to play and the deceit they were to practise on the unhappy men, and they acted the part so well that the

ceremony of marriage was gone through without any suspicion being entertained that anything was wrong. That this state of things could not be

reached by any law, civil or criminal, I hesitate to affirm. The appellants in the present case might have been tried for cheating u/s 415 of the Penal

Code, and I am inclined to think that a very strong argument might be maintained in support of the opinion that these girls, wives though they be,

were guilty of abetment and conspiracy, within the scope and meaning of Section 107. The convictions, however, u/s 372 and 373 were altogether

mistaken, and should be set aside.

Pearson, J.

2. If, as I understand the referring order to mean, the evidence establishes no more than this, that the appellants, ""by falsely representing certain

girls or the Baniah, Dome and other low castes to be members of Kayasth, Rajput, and Ahir families, induced a number of Kayasths Rajputs and

one Ahir to take these girls to wife and to pay money for them to the appellants in full belief that the representation was true,"" then I am clearly of

opinion that they cannot be convicted of the offence defined in Section 372, Indian Penal Code. For conviction of that offence it must be proved

that the accused intended that the minor should be employed or used for the purpose of prostitution or for some unlawful and immoral purpose,

and knew it to be likely that the minor would be so employed or used. Not only are we given to understand that evidence of such intent or

knowledge is wanting; but it would seem that under the circumstances such intent or knowledge cannot certainly be presumed. The girls were

disposed of for the purpose of being married, and, although the marriages might have been objectionable under Hindu law on the ground of the

inequality in respect of social status of the respective parties to them, it does not appear that they would have been wholly invalid. The offence of

which the appellants were apparently guilty was cheating as defined in Section 415, Indian Penal Code.

Spankie, J.

3. I concur in the opinion of Mr. Justice Pearson.

Oldfield, J.

4. If the accused intended bond fide that the girls should be taken in marriage, although, by reason of difference of caste, no legal marriage might

take place under Hindu law (and on this point it is unnecessary to give an opinion), yet the accused will not be guilty of an offence under Sections

372, and 373 Indian Penal Code, for it cannot be said that they acted with intent that the girls should be employed or used for purposes of

prostitution or for any unlawful and immoral purpose, or that they knew it to be likely that they would be employed or used for such purpose. The

reference does not require us to go further in our reply or to say what offence under the Penal Code the accused may have committed.

Straight, J.

5. Upon the question I have submitted to the Full Bench in this reference, I am of opinion, that the convictions under Sections 372 and 373 cannot

be sustained. The main object and real intent of the accused was to get money and the representations made were merely the means to that end I

do not think it can be said that the prohibited act was done with the intent, that the minor should be used for an ""unlawful and immoral purpose.

All the false statements were directed to convincing the proposed purchasers of the girls of their caste qualifications for marriage, and the Sessions

Judge specifically found that the buyers were deceived. This is clear from the fact, that in each case the ceremony of marriage was gone through

with all the accustomed formalities attending such proceedings, and it is equally plain, that the accused, never contemplating that discovery of their

frauds would take place, intended, that the girls should live as the wives of their purchasers. It was contended by the Junior Government Pleader,

that, as in point of fact no proper or recognizable marriage could take place between persons of these different castes, the accused must be

assumed to have intended the natural consequences of their acts, namely, that the ultimate position of the girls would be that of mere mistresses.

Even if this be so, which I very much doubt, it cannot be said, that that is an "unlawful and immoral purpose." It may be immoral, but it is

impossible to say it is unlawful. The mischief aimed at by these sections was traffic in female minors for purposes of "prostitution," that is, in its

perfectly well-understood sense, "or for any unlawful and immoral purpose" of a like description. But here a form of marriage, no matter what its

precise character was, was gone through, and though the men who took part in it have been punished by being put out of caste for disregarding the

rules and regulations of their community, it does not appear to me, that the girls should, for the purposes of the law, be regarded as any the less the

wives of those excommunicated persons.

6. Entertaining the views I do, I am of opinion that the convictions under Sections 372 and 373, Penal Code, must be set aside.