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Emperor Vs Maha Ram and Others

None

Court: Allahabad High Court

Date of Decision: Feb. 25, 1918

Citation: (1918) ILR (All) 393

Hon'ble Judges: Walsh, J; George Knox, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Knox, J.

Maha Ram who described himself as son of Kallu by caste a sweeper, Mangli, son of Sundar, sweeper, and Bachhan, son of

Laiq, sweeper, have been convicted of an offence u/s 68 of Act No. XV of 1872. In the ease of Maha Ram Section 109 of the Indian Penal Code

is to be read with Section 88 of Act No. XV of 1872.

2. The case for the prosecution is that Maha Ram is a Christian; that on the 3rd of June, 1917, he was married to the daughter of one Shib Lal

bhangi, and that Bachhan and Mangli ^were mans, or so-called priests of the sweaper class, who solemnized the marriage according to bhangi

rites. The assessors gave it as their opinion that Maha Ram was not a Christian and that therefore no offence u/s 68 of Act No. XV of 1872 had

been committed. The learned Sessions Judge, however, was of a different opinion. He found the accused persons guilty and sentenced them each

to undergo rigorous imprisonment for a term of one year. The appellants have been represented in this Court by learned Counsel. The contention

on behalf of the appellants is that Section 68 of the Christian Marriage Act does not apply; that Maha Ram was not a Christian at the time of his

marriage; and that it is not proved that Bachhan and Mangli solemnized the marriage. The first point, therefore, that arises for consideration is

whether Maha Earn was at the time of the marriage a Christian.

3. Act No. XV of 1872, and specially the section concerned, which is a section imposing what may amount to a very severe punishment, has,

under the well-known rules for construction in such cases, to be so construed that no cases be held to fall within it which do not fall both within the

reasonable moaning of its terms and within the spirit and scope of the enactment. No violence must be done to its language in order to bring people

within it, but rather care must be taken that no one is brought within it who is not within its express language: The London County Council v.

Aylesbury Dairy Company (1898) 1 Q. B. 106. As Abbott, C. J., pointed out in Proctor v. Manwaring (1819) 3 Bom Ald. 145 it is not

competent to a court to extend the words by construction.

4. Now Act No. XV of 1872 was an Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

This was the legislative intent, and it will have to be seen that the interpretation placed upon the words in this section is one which harmonizes with

the context and promotes in the fullest manner the policy and object of the Legislature.

5. The term ""Christian"" is interpreted in Section 3 of the Act and runs as follows:---""The expression Christian means---persona professing the

Christian religion."" The use of the word ""means"" in this passage shows that the definition is a hard and fast definition and that no other meaning can

be assigned to the expression than is put down in the definition: Gough v. Gough (1891) 2 Q B. 655. and Bristol Trams Coy. v. Mayor &c. of

Bristol (1890) 59 L. J. Q. B. 441

6. In several sections of the Act, as for instance, Sections 23, 37 etc. another term is used, namely, ""Native Christian."" Also there is a part of the

Act which is entitled ""Marriage of Native Christians"" and which extends from Section 60 to Section 65 of Act No. XV of 1872.

7. Section 3 interprets the expression ""Native Christian."" The meaning given to this latter expression is different from the meaning given by the Act

to the expression ""Christian."" It includes the Christian descendants of natives of India converted to Christianity as well as such converts. If the

Legislature had contemplated applying Section 68 to a Christian, i.e., a person professing the Christian religion, and had wished to comprehend

within it a Christian descendant of a native of India, it would have been easy to provide for this in Section 68. That no such provision was made

confines Section 68 strictly to persons who at the time of marriage were persons professing the Christian religion. It is important to notice this, as

occasionally in the argument on behalf of the prosecution attempt was made to contend that Section 68 applied not only to a Christian but also to a

Native Christian. I am unable to accept this contention, and I hold that the issue which I have to decide is whether Maha Ram at the time when he

was married to the daughter of Shib Lal was or was not a person professing the Christian religion. Again I repeat the word ""means"" which is to be

found in Section 3 is an inclusive term and therefore no one except a person who professes the Christian religion comes within the purview of

Section 68.

8. This drives me back upon the necessity of deciding who is a person who professes the Christian religion.

9. I have not been referred to nor have I been able to find any precedent which lays down clearly what meaning is to be attached to the words

profession of Christianity.

10. Murray in the Oxford Dictionary, (Volume VII, 1909), interprets the word ""profess"" thus:---""To affirm or declare one"s faith in or an

allegiance to; to acknowledge or formally recognize as an object of faith or belief (a religion, principle, rule of action, God, Christ, a saint, etc.)

11. In the case before us we have not to deal with a person of an immature age or one who for any reason is unable to give a reasonable account

of the faith that he holds, e.g., an orphan of tender years in a school, etc. For several years Maha Earn has been a grown up lad mixing in village

and school life. There must, have been many opportunities for observing and noting what he acknowledged or formally recognized as an object of

faith or belief, and I should expect to have been referred to abundant evidence on this point. He is the son of one Kallus. Regarding Kallu the

evidence is that he was elected to the position of elder in the Presbyterian Church; that he was ordained by the Presbytery; that he can under

certain circumstances administer sacraments; that he is a moderator every year; that he has been confirmed, that he sits upon session as sirpanch of

a local Church; that he was an officiating elder up to and after the marriage of Maha Ram; that he was an outspoken preacher; that he prayed and

preached Christianity; that he taught Christianity in his own village and in adjoining villages; that on one occasion when a thanadar said he would

not believe Kallu to be a Christian unless he prayed, Kallu offered up prayers in public. All this is strong "prima facie evidence of his having been a

person who professed the Christian religion.

12. The same might be said of the evidence given regarding Bachhan and Mangli. It does not go into as many details, but it gives specific instances

where these men ""professed"" the Christian religion, I have searched in vain for similar definite and specific information in the case of Maha Ram.

There is evidence which points the other way for whatever it is worth. It seems to me of very little value and so I do not go into it.

13. The evidence upon this point given by the Crown consists of the evidence of.

(1) The Rev. A. W. Moore, a minister of the Presbyterian Church and a Missionary in charge of the Mission at Mainpuri;

(2) Isa Das, the own brother of Maha Ram;

(3) Sundar, who says that he became a Christian some five years ago;

(4) Behari;

(5) The Rev. W. T. Mitchell, Missionary at Mainpuri;

(6) Madan Lal, a petition-writer.

14. The evidence of the Rev. A. W. Moore is to the effect that Maha Ram is a Christian and that Bachhan and Mangli are also Christians, When

cross-examined as to the meaning of this word Mr. Moore says:---""We call a man Christian though not confirmed or professing the Christian

religion,"" further on, while saying that Bachhan and Mangli had both to his knowledge professed Christianity, he does not make the same statement

regarding M aha Ram. All that he says about Maha Ram is that his name was entered in the Baptismal Register, which sacrament was apparently

administered at the time when Maha Ram was a babe 3 years old; that he never up to the time of his marriage told the witness that he was not a

Christian, and that though he has seen him ,since his marriage he has not denied that he is a Christian. When the witness on one occasion said to

him that judging by the clothes he wore no one |would take him for a Hindu he laughed and said ""no."" The witness got Maha Ram entered in the

Industrial School at Farrukhabad to learn carpentry. He was at the school up to within 2 or 3 days of the, wedding. The school is for Christian

boys only and witness sent him there as a Christian. This is all upon the point. It does not appear then from the evidence of this witness that Maha

Ram ever took part in Church ceremonies such as prayers and the like.

15. The next evidence in point of importance is that of Rev. W. T. Mitchell, He baptized Maha Ram when he was 3 years old. In his examination-

in-chief this witness says that Maha Ram, when he was in the school at Mainpuri, professed to be a Christian; that he took part in Church ritual a

little before March, 1915, but the witness does not specify what part or what particular ritual. In cross-examination this witness says that while all

the brothers and sisters of Maha Ram had been baptized, they have, with the exception of one brother the witness Isa Das, been married

according to bhangi rites- They have not strictly adhered to the tenets of Christianity.

16. Isa Das, the brother of Maha Ram, gave it as his deposition that Maha Ram is a Christian He never knew that Maha Ram had renounced

Christianity. In cross-examination he had to admit that he lived apart from Maha Ram and that one of his sisters was married according to bhangi

rites.

17. The rest of the evidence for the Crown is of little importance. It is, however, abundantly apparent from it that Maha Ram had given it out that

he intended to have his marriage solemnized according to bhangi rites. Much attempt was made to dissuade him and his father from doing this, but

the persuasions were in vain, and it appears from the evidence of Mr. Moore that in a marriage solemnized according to bhangi rites idolatry takes

place and Devi ka puja or the worship of the goddess Devi is gone through.

18. In brief, then, it would appear from the above evidence that no distinct ""profession"" of the Christian religion is attributed to Maha Ram beyond

the fact that he dressed as a Christian, that when he was at the school at Fatehgarh he wrote one or more letters in which he called himself Mahbub

Masih. He had never been admitted to sacrament, and, according to the witness Moore, such admission depends upon a confession of faith. This

Maha Ram has never been shown to have made. His brothers and sisters, with the exception of Isa Das, are all persons who have been married

with bhangi rites and at such a marriage an open profession of idolatry is made before witnesses.

19. I am not prepared to hold that a person is a person professing the Christian religion within the meaning of Act No. XV of 1872 simply because

he is baptized as an infant when he has no possibility of saying to the world what is the faith to which he belongs, nor do I attach any particular

value to the fact that he attends a Christian school. The learned Counsel for the Crown wished me to hold that a person who took the advantage

supplied by a Christian school was estopped by his conduct from professing that he was not a Christian. The dressing as a Christian seems also to

me very far from being conclusive on this point, especially in the case of persons who belong to the bhangi class. The furthest point urged in this

direction by the prosecution is perhaps the writing of letters under the title of Mahbub Masih; but no letter was produced nor was it shown that

letters so written were at all of a public nature. On the other hand, we have undoubtedly a profession in the case of his performing Devi ka puja at

the time of his marriage. That act was undoubtedly a profession, an act entirely inconsistent with, 1 might add repugnant to, the view that the

person performing it was a person professing the Christian religion. I am not satisfied therefore that at the time when this marriage was solemnized

Maha Ram was a Christian.

20. Holding as I do that Maha Ram was not a Christian at, the time of this marriage, it follows that no offence under the Act was committed on the

3rd of June, 1917, either by the so-called principals Mangli and Bachhan or by the abettor Maha Ram.

21. I do not consider it necessary to go into the question whether Section 68 of Act No. XV of 1872 was intended to penalize marriages other

than those intended to be or purporting to be marriages under the Indian Christian Marriage Act, 1872. It seems extremely doubtful whether it was

so, but, as I have said before, the question does not arise for decision in this case.

22. Walsh, J.---I entirely agree. I should hold, apart altogether from the general history of Maha Ram, to which my brother has referred, that when

a person on the eve of his marriage resists all pressure and persuasion to be married as a Christian by a Christian ceremony, and, having by birth

and connection other religious associations, deliberately decides to marry a sweeper, according to sweeper rites, and does public worship to

Hindu gods in the presence of his relations and friends, he is not ""a person professing the Christian religion.

23. Mr. Sorabji contended that Maha Ram was ""estopped"" from denying his Christianity. Apart from the fact that the principle of estoppel has no

place in the criminal law, the idea of a ""Christian by estoppel"" is a contradiction in terms.

24. The wider question, as to the real ambit of Section 68 of the Indian Christian Marriage Act of 1872, is really involved in what we have decided

and I propose to state my views about it for the following reasons. The case for the prosecution was argued mainly upon that ground; the learned

Sessions Judge who decided this case obviously did not like it, but felt himself bound to follow the decision in 40 Madras; there has already been a

division of judicial opinion on the subject; the question is one of public importance; I entertain no doubt upon it, and I think that prosecutions like

the present should be discouraged.

25. It is important to consider the Scope and object of the legislation. It is a consolidating and amending Act, replacing the English Acts of 1818

and 1851, relating to marriage in India, and the Indian Acts of 1852, 1865 and 1866, dealing with the same subject. These were enabling statutes

providing special conditions appropriate to the special circumstances and difficulties which are likely from time to time to confront those in India

who wish to be married by Christian marriage. The history of the legislation shows that doubts had arisen as to the validity of certain marriages, and

it was clearly intended to facilitate such marriages and to validate them and at the same time to guard them by strict requirements. The legislation is

not unlike the Foreign Marriages Act in England. The object of the Act is not to prevent people marrying as they wish, but to enable them to

protect themselves and their posterity by a lawful and binding marriage if they wish to be married as Christians. The Act is to be called the Indian

Christian Marriage Act, and in my opinion it deals with Christian marriages, and Christian marriages alone. In future such marriages can only be

lawfully effected under this Act. If they are not solemnized by one of the persons described in Section 5, they are made void by Section 4. The Act

does not prohibit even a professing Christian from marrying otherwise than under the Act if he wishes to do so.

26. We therefore start with this that there is no express prohibition preventing a professing Christian from doing violence to his faith and marrying a

non-Christian by a non-Christian ceremony. His marriage may not be valid by English Law as a Christian marriage in India, but it is not forbidden

to him. It would be a startling result of this Act, if such a person being free to choose, and not prohibited from marrying otherwise than by a

Christian marriage, should find himself liable to transportation for abetting the person who marries him.

27. An analysis of Part VII of the Act, which deals with penalties, shows that such penalties are in the main directed against the offence of either

one party or the other, or the officiating celebrant, or the official who may lawfully authorize the celebrant, wilfully and falsely doing some act in

pretended pursuance of the Statute which probably would, and certainly might, render the whole proceeding invalid. Omitting Section 68 for the

moment, every other offence dealt with is an act done which the Act requires to be done, and which is done either by a person lawfully authorized

but by unlawful means, or by lawful means by an unauthorized person.

28. Turning to Section 68, it is to be noted that the section does not make it criminal for a professing Christian to marry by a ceremony which is

void u/s 4. It is confined solely to the persons who solemnize the marriage, and the Act makes it criminal for a person to solemnize a marriage who

is not authorized by Section 5 to do so. But Section 5 only authorizes a person to solemnize Christian marriages, and no body can solemnize

Christian marriages in India who is not authorized by that section. Section 5 itself appears to employ the word ""marriages"" in the widest possible

sense. ""Marriages,"" it enacts, ""may be solemnized in India,"" by certain specified persons. But this does not mean that no other marriages may be

solemnized in India. That would be an impossible contention. It must, therefore, mean ""marriages under this Act,"" or in other words ""Christian

marriages."" I read Section 68, therefore, as referring to a class of persons, namely, those who solemnize, or profess to solemnize a Christian

marriage under this Act, not being authorized by Section 5 to do so. I car not believe that the Legislature could have intended to sweep into the net

of the criminal law, through an indirect piece of legislation by reference, not only every professing Christian who chooses not to be married as a

Christian, but every non-Christian whom such persons might marry, and every non-Christian who took part in the solemnization or celebration.

This would be contrary to the ordinary mode of interpretation of a statute, and would produce far reaching and almost ludicrous results. I do not

think the question turns upon the word "" solemnize "" so much as upon the object and scope of the Act. The case of Queen Empress v. Paul I. L.

R(1896) Mad. 12 decided in 1896, turned on the word ""solemnize."" The Sessions Judge had acquitted on the ground that the part taken by the

Hindu priest did not amount to solemnization. He seems to me to have been feeling for a way of evading the construction of the Act now

contended for and to have seized on the word "" solemnization."" The appellate court disagreed, but I think their, minds were diverted from the real

difficulty. They went on to hold that the contracting parties themselves ought to have been convicted of abetment. As I have said, this is a startling

result, and satisfies me that there must be a fallacy in the reasoning which reaches it. I have carefully considered the recent case In re Kolandaivelu

I. L. R(1916) Mad. 1030, decided by the Chief Justice and two Judges on a reference by Napier, J. I cannot agree with it. I see no answer to the

reasoning in Napier, J"s, referring order, while the Chief Justice slips into an apparent error. ""Section 68,"" he says, ""merely provides a penalty for

solemnizing or professing to solemnize such a marriage contrary to the provisions of the Act."" This is not so. It imposes a penalty upon any person

who does u/s 5 what he is not authorized to do, namely solemnizes a Christian marriage.

29. Mr. Sorabji urged that the intention of the Legislature was clear. They did not want the country flooded with void marriages with all the

incidental evils as to illegitimate children and questions of property and inheritance. This result would be equally produced by a state of

concubinage not regularized by any form of marriage, and the interpretation contended for might be said rather to encourage concubinage. On the

other hand, as was pointed out by the Government Advocate, who appeared at our request so that the view of Government might be presented to

us, the Madras High Court in 1910 held that such a marriage as the present may be valid by Hindu law if a custom is established governing such

marriages. See Muthusami Mudaliar v. Masilamani I. L. R(1910) Mad. 342. In that case the bride was a Roman Catholic. She removed the cross

from her neck, and her forehead was smeared with holy ashes by a Brahman priest. The trial court spoke of "" the prevalence of the practice of

Hindus marrying Christian girls according to Hindu rites and such girls after their marriage following the Hindu religion."" The validity of the marriage

was upheld by the Madras High Court. This seems to me an additional ground for differing from the decision of the so-called Madras Full Bench in

40 Madras. The result seems that, at present according to the law in Madras, a valid Hindu marriage maybe a criminal offence, both on the part of

the principals and on the part of those who celebrate it. I cannot accept this consequence, which illustrates very forcibly the importance of holding

to the principle which my brother Knox has reiterated, of not straining a criminal enactment beyond what is included in its express terms.

30. We allow this appeal. We find Mangli and Bachhan not guilty of the offence charged, i. e. an offence u/s 68 of Act No. XV of 1872, and

Maha Ram not guilty of abetment of the aforesaid act and direct that they be released. We understand they were permitted to give bail; if they did

give bail, the bonds will be discharged.