

Aslop Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/465850

Court : Allahabad

Decided On : Jun-17-1930

Reported in : AIR1930All834; 129Ind.Cas.370

Appellant : Aslop

Respondent : Emperor

Judgement :

ORDER

Boys, J.

1. This case would have never been referred if the Sessions Judge had not applied to the circumstances of the case and evidence given in it the same Sort of tests that might have been appropriate, had he been dealing with the question of whether some large estate was impartible or not, or whether there was a custom of some unusual nature existing in some particular family. The facts are simple. One Mt. Mulhu was first married to a man called Juma who proceeded to marry another woman, to ignore Mt. Mulhu and to leave her apparently entirely to her own devices and unprovided for three years and to ignore her going through the ceremony of marriage with another man. This the learned Sessions Judge does not consider constituted desertion, and apparently he holds that it does not amount to desertion because Juma could at the end of the three year³, if he had liked, have reclaimed his wife. The next step is that Mt. Mulhu, by a well-

recognized form of marriage, the karao form, marries a man called Bhagwana; and the accused had been found guilty of taking her away from the custody of Bhagwana and punished under Section 498. The accused have succeeded in persuading the Second Additional Sessions Judge of Meerut to refer the case to this Court on the ground that Bhagwana was not the lawfully married husband of Mt. Mulhu and had therefore no authority to institute a complaint under Section 498,1. P.C.

2. It is admitted that the karao form of marriage is a well recognized form amongst people of the caste and class of those with whom we are concerned. The admission that such a marriage can be regarded as a legally valid marriage presupposes that it is possible for the first marriage to be regarded as dissolved. Whether the Hindu law in its highest form recognizes or does not recognize divorce is immaterial. The fact that a second marriage in the karao form during the lifetime of the first husband is recognized and is admittedly recognized as valid amongst the class of people with whom we are concerned carries with it inevitably the proposition that the first marriage can under some circumstances be regarded as no longer a valid marriage. In the present case we have all the facts found which would be amply sufficient to show, and were in [the opinion of the Magistrate amply sufficient to show, that the first husband had in fact absolutely abandoned his wife. Under those circumstances I can see no possible ground for holding that the karao marriage to Bhagwana was not a valid marriage. That is all there is in this point.

3. On the next point that the Magistrate exceeded his powers in giving two months' imprisonment in default of payment of the fine the Magistrate himself is agreed.

4. The result is that I accept the reference only so far that I reduce the period of imprisonment to be suffered in default of the payment of the fine from two months to six weeks. For the rest the reference is rejected.