

**In Re: Nari Alias Senjimalai**

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**SooperKanoon Citation :** [sooperkanoon.com/801962](http://sooperkanoon.com/801962)

**Court :** Chennai

**Decided On :** Dec-09-1924

**Reported in :** AIR1925Mad716; (1925)48MLJ594

**Appellant :** In Re: Nari Alias Senjimalai

**Judgement :**

**Srinivasa Aiyangar, J.**

1. I very much regret to have to set aside the conviction and sentence in this case. I have no doubt whatever in my mind that the accused was a customer in the brothel kept by the prosecution 2nd witness, and on the evidence on the record there seems to be no doubt whatever that he was constantly in the habit of helping her in the business she was carrying on as keeper of the brothel. I have also no doubt, in my mind, when the accused took the girl to the house of the prosecution 2nd witness, if his intention was not that she should be used, it is clear he knew that she was likely to be used in course of time, for purposes of prostitution. In these circumstances, if the words in Section 372 of the Indian Penal Code were:

Any person who sells, lets to hire or does anything else in the case of any minor under sixteen years, with intent that such minor shall be employed or used, etc.

I should Have had no hesitation whatever in finding the accused guilty and confirming the conviction and sentence. But, the words used in Section 372, are 'selling, letting to hire, or otherwise disposing of a minor.' This is not a case of

selling or letting. There is no evidence of any passing of pecuniary consideration or any stipulation with regard to such consideration. Did the acts complained of then constitute or amount to disposal of the minor? The word 'disposal' necessarily connotes, to my mind, some control, at any rate, by the person disposing over the minor disposed of. I do not think it is necessary for my purpose to say more than that, or to seek to define further the connotation of that expression. But in my judgment, there ought to be some evidence at any rate of control over the person disposed of at the time by the person disposing of, before it can be said of him that, by his acts, he disposed of the minor in question. There is, unfortunately, in this case, no evidence whatever of any such control possessed or exercised by the accused. For, all that we are able to see in the evidence, it may be that the accused, who was a customer of the brothel, came across this girl that had run away from her father's house unable to bear the ill-treatment of her step-mother and directed her to the brothel kept by P. W. 2 in order that she may be used for the business carried on by P. W. 2. But such a mere direction of the minor, or recommending her to go over there, would not, in my judgment, constitute a disposal of the minor. I am, therefore, constrained in this case to hold that the accused could not, having regard to the language used in Section 372, Indian Penal Code, be found to have committed the offence under that section. I cannot part with this case, without expressing my surprise that the authorities should have failed in this case to prosecute P. W. 2, who was the person present to be most responsible. Whatever the object of the accused might have been, there is no doubt whatever, that, when the prosecution 2nd witness received the minor into her house, her intention was too obvious to be questioned. , However, I, am not concerned now with any case against P. W. 2, and, as I have already stated, I am unable to hold that the accused has committed any offence under that section.

2. The conviction and sentence are, therefore, set aside and the bail bond will also be cancelled.