

A.R. Manuel Vs. Emperor

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Court : Kolkata

Decided On : Jul-30-1935

Reported in : AIR1935Cal678,158Ind.Cas.791

Appellant : A.R. Manuel

Respondent : Emperor

Judgement :

Lort-Williams, J.

1. In this case a Rule was issued to show cause why the conviction and sentence passed upon the petitioner should not be set aside. The Rule was issued on the ground that the age being required to be put in under the schedule to Section 38, Indian Christian Marriages Act (15 of 1872), although not required by the section, the misdescription of the age in the notice form does not amount to an offence under Section 66(b) of the Act.

2. Mrs. Gilbert, wife of Ivan Gilbert, filed a complaint against the accused, alleging that he had abducted her daughter Noreen, aged 17 years. That was on 22nd January 1935. On 12th January the accused had applied to the Marriage Registrar in Writers Buildings for a license to be married on 17th January, declaring the girl's age to be 22. The girl left her home on the 17th and could not be traced. Thereupon a warrant was issued for the production of the girl and a summons against the accused under Section 366, I.P.C. The accused appeared in Court on

the 29th and the girl was found by the police on 6th February and produced in Court. In course of this trial, Ivan Gilbert filed a complaint on 20th February 1935, against the accused under Section 66(b), Indian Christian Marriages Act. It is difficult to understand how the proceedings under Section 366, I.P.C., came to be instituted against the petitioner, and if instituted came to be dealt with by a responsible Court; because it must have been obvious to everybody concerned that having regard to the undoubted age of the girl and her willingness throughout there could be no charge under that section. This may explain the reason for the initiation of the present proceedings which, in our opinion, were hardly necessary, for reasons which I will explain hereafter. These proceedings seem to have been taken owing to the disappointment of the complainant over the failure of the proceedings under Section 366.

3. On the point of law raised by the learned Advocate for the petitioner, Section 38 provides that notice shall be given in the form contained in Schedule 1 thereto annexed, or to the like effect, and shall state therein the name, the surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, the time during which each has dwelt therein and the place at which the marriage is to be solemnised. The schedule in addition to this contains a space for the ages of the two persons who desire to be married. In my opinion the section governs the schedule and the space left for age is not necessary to be filled with that particular, because no such provision is made in the section. The truth of the matter in my opinion is that some days later than the passing of the section in its present form, it was considered necessary that ages of both parties should be given in the schedule, but this alteration has not been provided in the section itself. Every particular in the schedule, except the age, is provided for in the section. In *Dean v. Green* (1883) 8 PD 89, Lord Penzance stated, in respect to a similar section and schedule,

Such being the effect of the enacting portions of the statute, it would be quite contrary to the recognized principles upon which Courts of law construe Acts of Parliament, to enlarge the conditions of the enactment, and thereby restrain its operation, by any reference to the words of a mere form, given for convenience sake in a schedule and still more so when that restricted operation is not

favourable to the liberty of the subject but the reverse. It is needless to cite authorities for these principles of construction, but it so happens that there is in existence a most apposite one by a Judge of high repute (Lord Cottenham) in relation to the schedule of this very statute. In *In re Baines* 1 Cr & Ph 31, he said speaking of this very schedule,

if the enacting part and the schedule cannot be made to correspond, the latter must yield to the former. But that does not dispose of the matter, because Section 66 provides, *inter alia*, that whoever, for the purpose of procuring any marriage, intentionally makes any false oath or signs any false notice or certificate etc.

4. Therefore, in spite of the fact that he might have left out the ages in the schedule, nevertheless having inserted them, he is liable under Section 66 if, in fact, that information was false to his knowledge because by signing such a notice he has signed a false notice within the meaning of the section. Notice or no notice, such a marriage would not be valid, because the consent of the father or the guardian is required in the case of a minor who desires to marry, the minor under the provisions of this Act being a person under 21 years of age. According to the accused's statement, he and the girl went to the Registry Office and she dictated the particulars and he wrote them down. This also would not absolve him from the penalties of the section, so long as he was aware that the girl's statement, which he entered in the notice was false. Later on it appears that the girl's father learnt of the proceedings and the accused himself went to the, Registry Office and cancelled the notice. The main point for determination was the accused's knowledge about the girl's age. Upon this point the learned Magistrate has proceeded in quite a wrong way. He started off with a consideration of the statement of the accused, instead of considering the evidence adduced by the prosecution on this point. He stated that in all the 11 pages of his written statement, he did not find a single word to show that the accused was not aware of the real age of the girl, and that the accused had not attempted to deny that he was not aware of it.

5. As we have so often pointed out in criminal trials it is not for the accused to say anything unless he chooses and in any case the prosecution must prove their

case, apart from any statement made by the accused or any evidence tendered by him. Moreover, in fact, the learned Magistrate has not found specifically that the accused had any knowledge of the girl's age, though indirectly he has arrived at a conclusion which assumes that he has come to such a finding because he says that the accused had known the girl and her family since 1931 and that the father had refused his consent to the marriage on the ground that she was only 17. Further, the learned Magistrate says that the accused is a Barrister and a company promoter and he ought to know the law. However, without specifically finding that the accused had this knowledge, the Magistrate has found that the accused intentionally made a false declaration. In view of the fact that this objection to the form of the judgment is somewhat technical, and that there is some evidence to show that the accused was aware that the girl was under 21 years of age, we do not think it necessary to send this case back for retrial, and the conviction must be upheld.

6. With regard to the sentence, the learned Magistrate has expressed himself as being of opinion that the conduct of the accused throughout was despicable. It is difficult to understand what this expression of opinion is based upon, unless it be the disparity in the ages of the two people. But such disparity, as exists in the present case, hardly justifies the expression used by the learned Magistrate. Being of this opinion, the Magistrate sentenced the accused to six months' rigorous imprisonment. I have little doubt that he has been sentenced to this period of imprisonment, not because he signed a false notice, but because of his alleged relations with the parents of this girl and the girl herself. It is obvious from the evidence that this girl was in love with the petitioner and wanted to marry him. In these circumstances the sentence is clearly unjustifiable. In proper cases severe sentences may be inflicted, but in a case such as this, where no damage whatever was caused by the signing of the notice, obviously the position of the accused is that of one who has committed a technical offence, and must be punished for that offence alone. We consider it sufficient if his sentence be reduced to the period during which he was under arrest in the Court of the trying Magistrate; in addition he must pay a fine of Rs. 20; on payment he will be discharged from his bail bond.

Jack, J.

7. I agree.

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