

Lal Singh Vs. the State

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Court : Himachal Pradesh

Decided On : Sep-25-1953

Reported in : AIR1954HP43

Judge : Chowdhry, J.C.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 372

Appeal No. : Criminal Revn. No. 42 of 1953

Appellant : Lal Singh

Respondent : The State

Advocate for Def. : D.N. Vaidya, Govt. Adv.

Advocate for Pet/Ap. : I.D. Abrol, Adv.

Disposition : Revision allowed

Judgement :

Chowdhry, J.C.

1. This is an application in revision by Lal Singh against the order of the learned District Magistrate of Mandi, dated 29-7-1953, directing further enquiry against the petitioner.

2. It appears that the present petitioner along with 4 others viz. Narotam, Briju, Rewalu and Budhi Singh, was challaned under Section 366, read with Section 34, I. P. C. The case against them was that a minor girl named Shanti was kidnapped by Briju and Narotam from the lawful guardianship of her uncle Kesru (the girl's father being dead and mother having taken another man for her husband) and handed over to the present petitioner Lal Singh, and that Lal Singh sold her for Rs. 1600/- to Rewalu. The latter married the girl subsequently with the help of Budhi Singh. The learned first class trying Magistrate discharged all the 5 accused. The State went up in revision against the discharge of the present petitioner Lal Singh alone, and the learned District Magistrate passed the order of further enquiry, as stated above. He has ordered further enquiry against the petitioner because he was of the view that the petitioner appeared to have committed an offence punishable under Section 372, I. P. C.

3. That the girl in question was sold by the petitioner to Rewalu, and that the person sold was under the age of 18 years are facts which admit of no doubt. Under Section 372, I. P. C., however it is not merely sale of a person under the age of 18 years which has been made penal, but the sale must be with intent or knowledge of likelihood that the person shall at any age be employed or used for the purpose of prostitution or for illicit intercourse with any person or any other unlawful and immoral purpose. It is not the case of the prosecution that the purpose was prostitution. The prosecution case appears to be that the intention of sale was that the minor girl be employed or used for illicit intercourse with any person or for any unlawful purpose. Of such an intention there is absolutely no evidence in the present case. On the contrary, it is clear from the testimony of the prosecution witnesses Mst. Darshanu (the mother of Rewalu) and Khalalu that the sale was made with intent that the girl be married to Rewalu.

If marriage was the intention with which the sale was effected, it could not be for the purpose of illicit intercourse as explanation II to Section 372 I. P. C. clearly shows. Nor can performance of marriage be treated as a purpose unlawful or immoral. It may be stated here in passing that admittedly 13 days after the sale the girl was in fact married to Rewalu. There is no suggestion that there was any intention that between the sale and marriage the girl be subjected to illicit

intercourse, or that any illicit intercourse had taken place during the interval. The act of sale of a minor girl not being criminal per se, but only on proof of one of the intentions mentioned in the section and it being clear from the prosecution evidence itself that none of the criminal intentions existed in the present case, the order of the learned District Magistrate directing further enquiry was totally misconceived.

4. The learned Government Advocate argued that the marriage that was subsequently performed was not a valid marriage according to the Hindu law because the girl was not given away by her lawful guardian, her uncle Kesru, but by Budhi Singh. It is however to be remembered that the point of time which is crucial for determining the culpability of a person under Section 372, I. P. C., is the one when sale takes place. It is at that point of time that the intention of the accused who sells the minor has to be taken into account. With regard to that, as adverted to above, it is clear from the testimony of the prosecution witnesses themselves that the intention of sale was none other than that the minor girl be subsequently married to Rewalu. That being so, it is immaterial if the marriage which subsequently takes place turns out to be a marriage not strictly in conformity with the tenets of the Hindu law.

5. The learned Government Advocate further relied upon--'Girdhari Lal v. Emperor', A. I. Rule 1934 All 324 (A). That was a case which, was cited before, and relied upon by, the learned District Magistrate also. The sale in that case was of a married woman, and that is a circumstance which distinguishes it from the present case. The sale of a married woman cannot but be for illicit intercourse or an unlawful and immoral purpose since the purpose in such a case could not be marriage but only that she be kept as a mistress. Indeed, it was specifically found in the reported case that the sale was made for the purpose of the married woman being kept as a mistress. In the present case the sale was not of a married but an unmarried person. Further, it has been seen that the purpose of the sale was not that the minor girl be kept as a mistress but that she be married to Rewalu. This case has therefore no application whatsoever.

6. For reasons recorded above, I am clearly of the opinion that this is not a fit case in which further enquiry should have been directed against the petitioner in respect of an offence punishable under Section 372, I. P. C. It is not suggested before me that there was any other offence in respect of which further enquiry could have been directed. The revision is accordingly allowed and the order of the learned District Magistrate is set aside.

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