

## CRIMINAL REVISION.

*Before Costello and Lord-Williams JJ.*1928.  
Nov. 7.

PANCHU GOPAL SHAW

v.

THE EMPEROR.\*

"Girl", meaning of—Immoral Traffic Act (Beng. XIII of 1923), ss. 4, 31.

The word "girl", as used in section 4 of the Calcutta Suppression of Immoral Traffic Act, means a young female, and is not limited to unmarried girls only. A married girl under the age of sixteen years may be ordered to be removed from a brothel and to be detained in suitable custody and the husband of such girl may be directed, under section 31 of the Act, to contribute to her maintenance.

APPLICATION by one Panchu Gopal Shaw, who was ordered to contribute to the maintenance of his minor wife, Sakuntala, directed to be detained in the "Greaves Home" until she attains the age of eighteen years. The wife was recovered from a brothel by the police and placed before the Magistrate to be dealt with under the Immoral Traffic Act.

The material facts appear from the judgment of Costello J.

*Mr. Suresh Chandra Talukdar*, for the petitioner.

*The Deputy Legal Remembrancer, Mr. Khundkar*, for the Crown.

COSTELLO J. This was a Rule obtained on behalf of one Panchu Gopal Shaw, who is said to be the husband of one Sakuntala, who is a female child under the age of 16 years. I use the expression "female child" advisedly, because the question that falls for decision in this case depends upon the right interpretation of the word "girl" as used in section 4 of the Calcutta Suppression of Immoral Traffic Act, 1923, which is Bengal Act XIII of that year.

\*Criminal Revision, No. 1093 of 1928, against the order of M. M. Chatterjee, Honorary Presidency Magistrate of Calcutta, dated 11th Aug., 1928.

The matter arises in this way : the learned Magistrate of the Juvenile Court, Calcutta, on the 11th August of this year, made an order that Sakuntala should be detained for six years and her sister Urmila should be detained for ten years in the "Greaves Home." These periods were based upon the fact that, in the case of Sakuntala, her age was 12 years and, in the case of Urmila, some two years less. The Magistrate is obviously desirous that these two children should remain in the Home until they attain the age of 18 years. The Magistrate made the order, because, as he says, the evidence adduced before him satisfied him that they should be dealt with under the provisions of the Calcutta Suppression of Immoral Traffic Act. The order which he made was made under the provisions of section 4 of that Act which provides in effect that the Commissioner of Police or certain other officers may remove a girl apparently under the age of sixteen years from a brothel and the girl so removed may be detained in suitable custody until she attains the age of eighteen years; that is provided by subsection 2 of that section. Having made that order, the learned Presidency Magistrate made a further order, namely, that the present petitioner, Panchu Gopal Shaw, should be brought before the court, in order that he might be dealt with under section 31 of the Bengal Children Act, 1922. By that section, it is provided that the court, which makes an order for the committal of a child or young person to suitable custody, may order the parent or *other person*, liable to maintain the young person, to contribute to her maintenance, if able to do so. The learned Presidency Magistrate was of opinion that he had power to make an order directing that the husband of Sakuntala should be required to contribute to her maintenance while she was detained in the "Greaves Home."

This Rule was issued by us, because we thought that it was desirable that we should hear arguments upon the question whether or not the provisions of section 4 of the Calcutta Suppression of Immoral Traffic Act could be made to apply to the case, where

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the child in question happened to be married. I invited the learned advocate for the petitioner to direct our attention, if he could, to any provision, either in the Calcutta Suppression of Immoral Traffic Act, 1923, or in the Bengal Children Act, 1922, which in any way limited the meaning of the word "girl," as used in section 4 of the Calcutta Suppression of Immoral Traffic Act, and he was in fact unable to do anything of the kind. There is no limitation, in my opinion, placed on the meaning of the word "girl," as used in that section. It may perhaps be said that, in ordinary speech, the use of the word implies that the person referred to is unmarried. But obviously the primary meaning of the word is a young female human being. Indeed, the earlier meaning of the word was a human being of either sex. But generally speaking, the word "girl" simply means a young female, and when one reads sub-section (1) in conjunction with sub-section (2), the matter becomes abundantly clear, because sub-section (2) uses the expression "if satisfied that the girl is under sixteen years of age." The Calcutta Suppression of Immoral Traffic Act, 1923, and the Bengal Children Act, 1922, are really part and parcel of a scheme of legislation designed for the protection of children and particularly for the protection of minor females. I see no reason at all for ascribing to the word "girl" any such limitation as the learned advocate for the petitioner has invited us to put upon it. In my opinion, the Act applies whether the female in question is unmarried or is married, and the whole matter turns, not on the status of the female from the point of view of marriage or not marriage, but on the question of age. It is quite true that in certain cases it may happen that it would be a hardship that a husband who wants to have his wife in his custody should not be allowed to have her with him. But it seems to me very unlikely that such a case would really occur, because he would have had an opportunity of putting his case before the Magistrate who deals with the matter, that is provided in the Bengal

Children Act—and it would be a question whether it was desirable in the interests of the young female that she should be placed in a suitable custody other than that of her husband or whether she should be handed over to her husband. The material question in this class of case is the fundamental one of whether or not the female child concerned is living in such circumstances as to bring her within the terms of section 4. If the Magistrate is satisfied that the circumstances are such that she does come within the ambit of that section, then, in my opinion, he is certainly entitled to make the order that he did. I do not think that we are really concerned with the facts of the case, because I think the Magistrate has found quite clearly that the circumstances of this case are such as to justify him upon those facts in making the order which he thought fit to make.

On the other side, the matter is this: the whole purpose and the obvious design of this Act would be defeated, if the limitation which we are invited to put upon the word “girl” were put upon it by this Court. It would then be easy for a person who desired to live on the immoral earning of young girls to marry them solely for the purpose of enabling him to put himself outside the provisions of the statutes and to set the whole law at defiance. Personally, I have no doubt whatever that both these Acts apply to females under the age of sixteen years, whether they happen to have gone through the ceremony of marriage and become legally married or not. That being the position, this Rule must be discharged.

LORT-WILLIAMS J. I am not prepared to disagree. I must admit that I have felt considerable anxiety over this matter, because it astonishes me to find, in the case of a female whose husband is prepared to take her to a respectable home, that a Magistrate has power to deprive the husband of the custody and companionship of his wife for a considerable period—in this case, six years. I am not altogether satisfied that, when the Act was passed, it was intended to apply to such a case. Personally, I am very reluctant

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to interfere with the liberty of individuals to a greater extent than is absolutely necessary, and, to apply legislation of this character to persons who are married, seems to me to be going very far. I recognise that in this country girls are married at an early age, but the consequence of this may be remedied more appropriately by raising the permissible age for marriage. However, I am satisfied that the words of the Act are wide enough to cover the case of a married girl. The word "girl" is defined in Murray's English Dictionary as "a child or young person of either sex, a youth or maiden." Another definition is "a female child, commonly applied to all young unmarried women." I cannot say that the word "girl," used in this connection, is inapplicable to a child who happens to be married. A further reason for coming to this conclusion is that if the legislature had intended to limit the effects of this section to "unmarried" girls, it would have stated so specifically. For these reasons, I agree that the Rule must be discharged.

*Rule discharged.*

A.C.R.C.