These findings have been objected to; but on looking into the evidence we find they are correct.

The result is that we disallow plaintiff's claim to these hills, *i.e.*, Vanancheri, Ellarad, Mutrad, and Chekkeri, and to this extent modify the decree of the Lower Appellate Court; while we uphold the decree in so far as it concerns the rest of the property claimed in this suit.

Each party will bear his own costs of this appeal.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

SRINIVASA (COMPLAINANT), PETITIONER,

v.

ANNASAMI AND OTHERS (ACCUSED), RESPONDENTS.*

1892. March 8, 9, 22.

Penal Code—Act XLV of 1860, *s.* 372—*Illegal disposal of a minor—Revision.*

A dancing woman (fourth accused) of a temple applied to the manager (first accused) of the temple for the appointment of a girl under the age of sixteen, whom she had adopted as her daughter, to her "kothu" mirasi office to which duties more or less connected with the preparation of provisions of the temple were attached. The manager, before whom the girl had sung and danced, ordered that she be placed on the pay abstract like other dancing girls, and she was employed in the abovementioned duties about the temple for about five months. It appeared that the dancing women of the temple lived partly at least by prostitution, and there was evidence that the girl sang and danced in the temple, received wages and wore a pottu (an emblem of marriage). The Magistrate upon these facts refused to frame a charge against the manager of the temple and the adoptive mother of the minor under Penal Code, s. 372:

Held, per Collins, C.J. (*Parker, J., diss.*) that the Magistrate should have framed a charge.

On a petition under Criminal Procedure Code, ss. 435, 439, preferred by the complainant, who was a dismissed servant of the temple, after the prosecution had been pending for two years, it appeared that the girl had suffered no harm:

Held, that whether or not the Magistrate should have framed a charge, the High Court was not bound to send the case for retrial.

PETITION under sections 435 and 439 of the Criminal Procedure Code praying the High Court to revise the order of discharge

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* Criminal Revision Case No. 3 of 1892.

SRINIVASA v. ANNASAMI.

passed on the accused in calendar case No. 3 of 1891 on the file of the District Magistrate of Madura.

This case came before the High Court at an earlier stage of the proceedings, when the judgment was delivered which is reported *ante*. p. 41. The facts of the case appear sufficiently for the purposes of this report from the following judgments of the High Court.

Mr. *Wedderburn* and Mr. *Subramanyam* for petitioner.

The *Advocate-General* (Hon. Mr. *Spring Branson*) and *Subramanya Ayyar* for accused No. 1.

Ananda Charlu for accused No. 4.

COLLINS, C.J.—The points that are to be decided in this case are, first, upon the evidence taken by the District Magistrate is there a *primâ facie* case disclosed against the accused under section 372 of the Indian Penal Code? and, second, ought the High Court to order the District Magistrate to frame a charge? There were four persons accused—the first, the manager of a temple; the second and third, the natural father and mother of the girl Pichaimuthu; and the fourth, a dasi of the temple with whom Pichaimuthu has been living for some years.

The case for the prosecution consisted of oral and documentary evidence; the witnesses were not cross-examined, and the District Magistrate held that the prosecution had failed to prove an offence, and, accordingly, discharged all the accused under section 253 of the Criminal Procedure Code.

With respect to the second and third accused no evidence implicating them was given, and the District Magistrate was right in discharging them.

I have now to consider the evidence against the first and fourth accused, and to consider whether the District Magistrate was justified in refusing to frame a charge. Section 372 of the Indian Penal Code enacts that "whoever sells, lets to hire, or otherwise "disposes of any minor under the age of sixteen years with intent "that such minor shall be employed or used for the purpose of "prostitution or for any unlawful and immoral purpose, *or knowing it to be likely that such minor* will be employed or used for "any such purpose shall be punished, &c."

It must be taken as proved in evidence in this case that the dasis of this temple live by prostitution and kovil wages (see

evidence of eleventh witness). The fourth accused, a dasi of the temple (of which the first accused is manager) and holding a kothu miras in that temple, became, in 1889, incapacitated from age and illness from performing her duties in the temple, and, sometime before November 1889, she, accompanied by Pichaimuthu, went to a dancing party at the private house of the Village Munsif's brother. The first accused was present, and the fourth accused told him that she had taught Pichaimuthu dancing and singing and requested first accused to appoint Pichaimuthu in her place in the temple. The girl Pichaimuthu must have been then thirteen or fourteen years of age (as her age is given in 1891 as sixteen).

She danced and sung before the first accused on this occasion, and it is stated that he gave her Rs. 5, and in answer to fourth accused's request that she should be appointed in her place, the first accused directed fourth accused to present a petition, and told the Tahsildar to take work from her. On this point the thirteenth witness says that the fourth accused asked the first accused that her dasi appointment should be registered in the name of the girl, and the fourteenth witness, herself a dasi, corroborates that statement. On the 27th November 1889 exhibit A was sent by fourth accused directed to first accused, "Annasami Aiyar Avergal, Agent of the Sivaganga Zamindari." It is a petition by fourth accused describing herself as of the twelfth kothu miras of Tirukoshtiyur temple, praying that the employment of Vairavi and taking paddy for pounding into rice attached to the said kothu miras, which is in her name, be entered in the name of her daughter Pichaimuthu, and the petition is endorsed by first accused thus:—"The person named in the petition may be entered if there be no other objection to the miras duties mentioned in this petition," and he signs as agent and manager. This petition, No. 87, is also initialled by the Tahsildar of the temple, who, on the 20th December 1889, makes the following order in the temple records (exhibit B):—

"Tiruku—Yadast No. 108. As per the endorsement order No. 87, of the 28th ultimo, passed on petition presented to the head office by dasi Periamuthurutnam (fourth accused) of the twelfth kothu in the Tirukoshtiyur temple, enter for her duties her daughter Pichaimuthu in the pay abstract *like other dasis* and

SRINIVASA v. ANNASAMI.

take work from her. Yadast has already been sent. Cooked rice should be entered without entering pay.

(Signed) KRISHNIER,
Tahsildar."

Exhibit B is also signed by the head gumastah, and is said to have been communicated to the monigar and the karnam. The evidence further shows that after this Pichaimuthu attended at the temple and did work. She also sang and danced. She received wages. She wore a pottu (an emblem of marriage), and this continued for five or six months. The fact that she danced and sung in the temple is proved by the fourth, sixth, thirteenth and fourteenth witnesses, the last named being a temple dasi, who says "Pichaimuthu has danced and done work in the kovil with us."

The fact that she wore a pottu in the temple is proved by the fourth, fifth and eleventh witnesses, but is denied by the girl herself in answer to a question put by the District Magistrate after the counsel for the accused had obtained permission to reserve cross-examination. After Pichaimuthu had been, as is stated, performing these duties in the temple for five or six months, exhibit D was written by the Tahsildar to the first accused and a reply was sent, exhibit E. The District Magistrate says on this part of the case that it is reasonably certain that exhibits D and E originated in a fear of prosecution.

The exhibits F and G are not proved to have come from the records of the temple, and, as the counsel for the prosecution did not prove who wrote them or from whence they came, the District Magistrate was right in not considering them in his judgment.

I have now to consider whether there was a *primâ facie* case against the first and fourth accused. The District Magistrate does not say he disbelieves the oral evidence *in toto*; it is true that in paragraph 5 of his judgment he says that the evidence is "discrepant" as to whether the girl danced alone or with others at the private dance; that the evidence is "discrepant" as to whether she danced and sang in the temple, or whether she did only work, such as sweeping, drawing figures on the floor, &c., and that the evidence is also "discrepant" as to whether she at any time wore a pottu. There is no contradiction that I can observe in the material points of the evidence, except a denial of the girl herself that she wore a pottu, and that was, as I have

observed before, in answer to question from the District Magistrate; it is true that some witnesses give fuller particulars than others, but there is no material contradiction except the one I have noticed.

The District Magistrate also is of opinion that the pay abstracts show that her position was distinct from that of the regular dasis.

The principal point to be decided is, was there evidence of such a disposal of the girl as is contemplated by section 372? In other words, was there evidence that the accused disposed of the girl in such a way that they knew it to be likely that she would be employed or used for the purpose of prostitution. I am of opinion that there was evidence of such a disposition. The first accused, at the request of the fourth accused, caused the girl to be borne on the books of the temple, and there is evidence that in consequence of the petition in exhibit A being granted the girl was entered for her duties in the temple "like other dasis"—exhibit B. The fact that there is no evidence of dedication of the girl to the temple is immaterial. I am of opinion that at the time she was appointed to do the duties of the fourth accused (admittedly a dasi of the temple), and when she was enrolled in the temple books, and attended at the temple for the purpose of performing those duties, there was a sufficient disposal of her to satisfy the words of section 372, and it being in evidence that the dasis of this temple live partly at least by prostitution, the two accused knew it to be likely she would be employed or used for such a purpose. It was the duty, therefore, of the District Magistrate to have framed a charge.

The next point to be considered is whether or not the High Court is bound to send the case back to the District Magistrate and order him to frame a charge. I take into consideration the fact that there is no evidence that the girl was debauched during the time she was at the temple; that the prosecution is not conducted by the Government, but by a former servant of the temple who is prosecuting the accused, as the District Magistrate believes, out of spite against the first accused, that the first accused did, in May 1890, discharge the girl from her duties in the temple. I think, therefore, that the High Court is not bound to order the case to be retried, and I would dismiss the petition.

SRINIVASA v. ANNASAMI.

PARKER, J.—The questions before us are (1) whether the evidence taken establishes a *primâ facie* case of an offence under section 372 of the Indian Penal Code, and (2) whether, if it does, we should direct the District Magistrate to draw a charge.

As regards the documentary evidence I may observe that exhibits F and G are not proved. They are not shown to be attendance registers kept in the temple in the ordinary course of business, nor is it shown they come from proper custody.

It is admitted that no evidence has been offered against the second and third accused. As against the first and fourth accused, the facts which appear in evidence are that first accused saw the girl Pichaimuthu at a private party and was pleased with her dancing and singing. The fourth accused (the girl's adoptive mother and a dasi) then represented to first accused that she herself was sick and getting old, and requested that Pichaimuthu might be appointed to her mirasi office in the temple. The first accused told the mother to present a petition and told the temple Tahsildar he might take work from the girl. Exhibit A is the petition presented. It merely prays that the employment of Vairavi taking paddy for pounding rice and other duties attached to the twelfth kothu miras may be entered in Pichaimuthu's name. It appears from other evidence that the duties enumerated are all more or less connected with the provisions of the temple. The endorsement on exhibit A directs that Pichaimuthu's name may be entered to the miras duties if there is no other objection.

It is found that the girl performed these miras duties above specified for four or five months. There is further evidence that the girl sang and danced in the temple and wore a pottu when she did so. The District Magistrate expresses himself as not entirely satisfied with the evidence that she sang and danced. He does not find whether she wore a pottu or not, but the only witnesses who speak to this are those whose testimony is not accepted as to the singing and dancing.

On 28th May 1890 the then Tahsildar reported (exhibit D) that Pichaimuthu had been entered on the register and had done work connected with Vairavi, &c. (enumerating these duties as to provisions), but stated that, as pottu was not tied, she was not able to take her turn and do other duties before the swamy. He also said she was not of proper age. The agent replied blaming the late Tahsildar for omitting to notice this fact, and directed that

the girl be removed from service and her name struck off the acquittance roll.

It is not necessary to notice exhibit B. That document is not inconsistent with the above evidence, but as it was not written either by or to the first or fourth accused, and there is no evidence they ever saw it, it cannot affect the case.

This is the whole of the evidence in the case. It is not alleged that the girl has been actually debauched or that any attempt has been made to do so, and beyond the fact that by going to the temple she has been brought into association with dasis there is nothing to show that any harm has been done. As, however, her natural father and mother, as well as her adoptive mother, are all of the "dasi" caste, there can have been no change in her associations, which must have remained the same from her earliest childhood.

Do the facts found constitute a "disposal of" the minor within the meaning of section 372, Indian Penal Code? There is no evidence of dedication to the deity or of the formal tying of pottu, so that there has been no such change in the girl's *status* as would debar her from contracting a legal marriage. Nor has there been any transfer of possession since the minor has lived at home and merely gone to the temple to perform certain services. All that is proved is that her name has been entered in the kothu miras, and that she has been sent to perform certain duties in the temple. She has not been formally dedicated, and it is not at all clear that without dedication she is competent to hold the miras or to perform all the duties attached thereto. Her name may have been entered *pro tempore*, with a view to future dedication; but the question is whether such a disposal is complete.

The term "dispose of" has many meanings. In Webster's Dictionary it is defined as (*a*) to determine the fate of, to exercise the power of control over, to fix the condition, employment, &c., of, to direct or assign for a use; (*b*) to exercise finally one's power of control over, to pass over into the control of some one else as by selling, to get rid of.

Seeing that the term in section 372, Indian Penal Code, is used in conjunction with selling and letting to hire, it would seem that the Legislature rather contemplated some physical disposal for a mercenary purpose or the exercise of some power of control which would be final and irrevocable in its *moral effects*, more

SRINIVASA v. ANNASAMI.

especially as the words used are "sells, lets to hire, or *otherwise* disposes of," thus suggesting other acts *ejusdem generis*.

In this case there has clearly been no irrevocable disposal. The girl is not dedicated; there is no change in her *status*, and she is still free to marry; no physical possession of her person has been handed over; all that has been done is to register her name among the servants of the temple *pro tempore* and remove it when found unqualified. The District Magistrate does indeed say that this removal may have been the result of fear of prosecution, but this is a mere surmise. The evidence is not inconsistent with the rectification of a *bonâ fide* mistake.

Then as to the criminal intention, beyond the inference that it was intended Pichaimuthu should eventually become a dasi there is no evidence. It is not shown as to first accused at any rate that he intended she would become a dasi during her minority, and the terms of the endorsement on exhibit A may bear out the Magistrate's view that the intention was to the contrary. That there was any intention to use the girl for the purpose of prostitution before she became a dasi, or whether she became a dasi or not, there is no evidence at all.

Cross-examination might have brought out the facts more clearly, but upon the evidence as it stands it appears to me very doubtful whether the offence of disposing of the girl for the purposes of prostitution can be held to be complete.

Penal provisions of law must be strictly construed, and must not be strained against an accused person. There is no reason to hold that the provisions of section 372, Indian Penal Code, were directed against dasis as such, and it has been held in two cases—*Venku* v. *Mahalinga*(1) and *Queen-Empress* v. *Ramanna*(2)—that prostitution is not the essential condition or necessary consequence of becoming a dancing girl, and *a fortiori* it is not the necessary consequence of education to become one.

While, however, I am not able to agree with the learned Chief Justice that a technical disposal for the purposes named in section 372, Indian Penal Code, has been completed, I agree with him that, in either view, no further inquiry is necessary. The prosecution has been pending against the accused for nearly two years. Enough has been done to warn the temple authorities of the

(1) I.L.R., 11 Mad., 393. (2) I.L.R., 12 Mad., 273.

danger they incur if acts are done which amount to the disposal of a minor for immoral purposes, even though the ceremony of dedication to the deity be omitted. The prosecution has been carried on by a dismissed temple servant who has been convicted of theft, and who has endeavoured to support his case against his late employers by the production of records which he has stolen from the temple. Further proceedings could only tend to the gratification of private malice, and are not called for either for the protection of the girl or for the public good. I concur, therefore, in dismissing this petition.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

ARUMUGA (PLAINTIFF), APPELLANT,

v.

CHOCKALINGAM AND OTHERS (DEFENDANTS), RESPONDENTS.*

1892. March 11, 14.

Limitation Act—Act XV of 1877, *sched. II, arts.* 136, 138.

Limitation Act, 1877, sched. II, art. 138 is applicable to a suit brought by the assignee of a purchaser of land at a Court sale to obtain possession of the land.

SECOND APPEAL against the decree of R. S. Benson, District Judge of South Arcot, in appeal suit No. 95 of 1890, affirming the decree of P. Subramania Pillai, District Munsif of Virdhachalam, in original suit No. 366 of 1889.

Suit for possession of land sold to the plaintiff in 1883 by defendant No. 1, who had purchased it at a Court sale in April 1877. Neither had been in possession.

The District Munsif dismissed the suit, holding that the suit was barred by limitation. The District Judge on appeal affirmed the decree of the District Munsif.

The plaintiff preferred this second appeal.

Mr. *Subramanyam* for appellant.

Mahadeva Ayyar for respondents.

MUTTUSAMI AYYAR, J.—This was a suit by a purchaser at a private sale from the son of a purchaser at a Court sale, who had not

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* Second Appeal No. 532 of 1891.