

act was wholly outside the scope of the servant's employment, and in no way an incident of it. We must, therefore, dismiss the plaintiff's petition with costs.

GRAY
v.
FIDDIAN

In Civil Revision Petition No. 408 of 1890 :—Upon the question raised by the defendant, we are clearly of opinion that the Subordinate Judge could not decree to plaintiff a sum of money which defendant had merely offered as a matter of grace and without acknowledgment of liability (but merely to avoid litigation) and which offer the plaintiff had refused to accept. We must allow the petition, and reverse the decree of the Subordinate Judge and dismiss the suit with costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Parker and Mr. Justice Shephard.

QUEEN-EMPRESS

v.

BASAVA.*

1891.
Nov. 5, 17.

Penal Code, s. 372—Disposal of a minor—Dedication of a girl in a temple.

The accused dedicated his minor daughter as a Basivi by a form of marriage with an idol. It appeared that a Basivi is incapable of contracting a lawful marriage, and ordinarily practises promiscuous intercourse with men, and that her sons succeed to her father's property :

Held, the accused had committed an offence under Penal Code, s. 372.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by H. T. Knox, Sessions Judge of Bellary.

In this case the Magistrate convicted the accused, a Madiga, of an offence under Penal Code, s. 372. The minor in respect of whom the offence was held to have been committed was the daughter of the accused, and the "disposal" charged consisted of the dedication of the girl as a Basivi by the performance of a marriage ceremonial between her and an idol.

In his letter of reference the Sessions Judge expressed an opinion that the conviction was wrong. The Sessions Judge pointed out that the record was silent as to the effect of the

* Criminal Revision Case No. 475 of 1891.

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Basivi marriage ceremony save that it prevented a subsequent marriage, in regard to which he referred by way of comparison to the formal marriage of girls in Malabar under the Marumakkattayam law. He referred to evidence that it was not a matter of course for Basivis to prostitute themselves for money and added:—

“ The evidence is very clear that Basivis are made in accordance with a custom of the Madiga caste. Madigas are leather-workers, but in the western taluks of this district, where the custom seems to prevail, they appear to be in a position much better than that of the chuklers in the southern districts. It is also in evidence that one of the effects of making a girl a Basivi is that her male issue becomes a son of her father and perpetuates his family, whereas, if she were married, he would perpetuate her husband’s family. In the particular case the girl was made a Basivi that she might be heir to her aunt who was a Basivi, but childless. Siddalingana Gowd says that they and their issue inherit the parents’ property. There is evidence that Basivis are made on a very large scale, that they live in their parents’ houses. There is no evidence that they are regarded otherwise than as respectable members of the caste. It seems as if the Basivi is the Madiga and Bedaru equivalent of the ‘appointed daughter’ of Hindu law (Mitakshara, chapter I, s. XI, 3).

“ Upon the whole the evidence seems to establish that among the Madigas there is a widespread custom of performing in temple at Uchangidurgam a marriage ceremony, the result of which is that the girl is married without possibility of widowhood or divorce; that she is at liberty to have intercourse with men at her pleasure; that her children are heirs to her father and keep up his family, and that Basivis’ nieces being made Basivis become their heirs. The Basivis seem in some cases to become prostitutes, but the language used by the witnesses generally points only to free intercourse with men, and not necessarily to receipt of payment for use of their bodies. In fact they seem to acquire the right of intercourse with men without more discredit than accrues to the men of their caste for intercourse with women who are not their wives.”

The *Government Pleader* and *Public Prosecutor* (Mr. Powell) in support of the conviction.

Accused was not represented.

PARKER, J.—The evidence shows that a girl, who is dedicated as a Basivi, becomes incapable of contracting a marriage, which would be recognized as valid by the laws and customs of her caste; that she is at liberty and is expected to have promiscuous intercourse with men generally, and that she and any children born to her inherit in her father's family only.

The dedication thus made effects a change in the circumstances of the minor which was recognized as a "disposal" within the terms of section 372, Indian Penal Code, in the Proceedings of this Court, dated 11th April 1881, No. 746, paragraph 13(1), and the parents of the minor cannot but be aware that the minor will in consequence live a life which is recognized as immoral.

I do not think that any analogy can be drawn as suggested by the Sessions Judge between the dedication of a girl as a Basivi and the formal marriage of a girl in Malabar under the Marumak-katayom law. In Malabar there is no legal marriage, and neither a woman nor her offspring can ever pass into the family of a husband, while among Madigas such is not the case, and a girl, by becoming a Basivi, becomes incapable, *ipso facto*, of contracting a legal marriage. Nor do I think that the Basivi is the Madiga equivalent of the "appointed daughter" under Hindu law, since the latter arrangement neither debars from ordinary marriage nor contemplates the possibility of promiscuous intercourse.

I would decline to interfere with the conviction.

SHEPARD, J.—Having read the evidence in the case, I agree that an offence is proved and would decline to interfere.

QUEEN-
EMPRESS
v.
BASAVA.

(1) Weir's Criminal Rulings, 3rd Ed., p. 215.