

APPELLATE CRIMINAL.

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

SRINIVASA

v.

ANNASAMI AND OTHERS.*

1891.
October 10.

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

A dancing woman of a temple applied to the manager of the temple for the appointment of a minor girl, whom she falsely described as her daughter, to her "kothu" miras; the manager ordered that the girl be placed on the pay abstract like other dancing girls, and she was employed about the temple, though the ceremony of tying the bottu (after which the girl could not be married) did not take place:

Held, that the above facts constituted *prima facie* evidence that an offence under Penal Code, s. 372, had been committed by the dancing woman, the manager above named, and the parents of the girl.

PETITION under Criminal Procedure Code, ss. 435 and 439, praying the High Court to revise the proceedings of T. Weir, Sessions Judge of Madura, in criminal revision petition No. 42 of 1890, in which he declined to interfere with the proceedings of W. B. Ayling, Acting Head Assistant Magistrate of Madura, dismissing a complaint.

The complaint was made against the manager of a temple, the parents of a minor girl, and a dancing woman, charging them with having committed an offence under Penal Code, s. 372.

The Acting Head Assistant Magistrate had, previously to the above order, forwarded the case under Criminal Procedure Code, s. 202, for preliminary inquiry to the Sub-Magistrate of Tirupatur, who recorded the evidence referred to in the following judgment of the High Court.

The Acting Head Assistant Magistrate in dismissing the complaint said: "From a perusal of the papers it is clear that no offence has been committed at all. The tying of bottu to show dedication or the enrolment of this girl among the dancing girls of the temple is the important ingredient of the offence,

* Criminal Revision, Case No. 243 of 1891.

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“ to prove which there is no evidence. It does not appear that
 “ she had been dedicated with the formal ceremonies pertain-
 “ ing to the occasion. Further, the girl is only nine or ten years
 “ old and not matured. She is at liberty to marry, and the mere
 “ fact of her having been appointed to some menial services in
 “ the temple, (and even that has been cancelled before the date
 “ of this complaint,) would not of itself constitute an offence under
 “ the Penal Code.”

The Sessions Judge said in paragraph 2 of his order : “ The
 “ evidence does not show that there was any tying of the bottu,
 “ but shows that the girl was only employed to do certain menial
 “ offices in the temple, viz., figuring on the floor before the idol.”

The complainant preferred this petition.

The *Acting Advocate-General* (Hon. Mr. *Wedderburn*) for peti-
 tioner argued that the evidence showed that the girl had been
 dedicated to the temple service and referred to *ex-parte Padma-*
vati(1) and *Weir's Criminal Rulings*, 3rd edition, p. 215.

S. Subramanya Ayyar (*Bhashyam Ayyangar* with him) argued
 that mere registration as holder of the “*kothu*” miras was not
 enough, and that the tying of the bottu was a necessary prelimi-
 nary to a girl entering on the occupation of a *dasi*.

JUDGMENT.—The only question which is before us is whether
 the Sessions Judge was right in holding that there had been no
 such disposal of the minor as would bring the accused under
 section 372, Indian Penal Code. The Acting Head Assistant
 Magistrate was of opinion that no offence had been committed,
 because there was no evidence of the tying of the bottu, which in
 his opinion forms the important ingredient of the offence. The
 Sessions Judge would appear, from paragraph 2 of his order, to
 have been of the same opinion. In our judgment there may be
 such disposal of a minor as is contemplated by section 372 even
 though bottu is not tied. The facts of this case have not been set
 forth either by the Acting Head Assistant Magistrate or by the
 Sessions Judge. If they had been attentively considered, we hardly
 think the lower Courts would have come to the conclusion that
 there was no ground for proceeding against the accused. The
 facts to be gathered from the report of the second-class Magis-
 trate of Tirupattur, are as follows :—

(1) 5 M.H.C.R., 415.

In November 1889, fourth accused, a dancing girl of Thirukoshtiyur Devastanam, falsely styling herself the mother of a girl, Pichaimuthu, petitioned the first accused, the devastanam manager, to "appoint her daughter" to her (fourth accused's) kothu miras. The first accused, without, so far as appears from the record, making any inquiry, endorsed on the petition that the applicant's request might be complied with if there was no objection. The Tahsildar of the temple replied that the applicant had no objection, and that he had accordingly ordered that "Pichaimuthu should be entered in the pay abstract *like other dancing girls.*" It is not denied that the first accused received this communication, nor that Pichaimuthu was entertained and employed about the temple. From November 1889 to May 1890 Pichaimuthu's name was accordingly entered in the pay abstracts along with the names of the other dancing girls and she performed work in the temple. We consider that these facts constituted *prima facie* such a disposal of the minor with the knowledge that it was likely that she would be employed or used for immoral purposes as to justify the magistrate in putting the accused upon their trial, and that the rejection of the complaint on the ground that there had been no such disposal as was contemplated by section 372 was illegal. We set aside the orders of the Courts below; but as the Acting Head Assistant Magistrate has already expressed an opinion on the case, we order it to be transferred to the District Magistrate of Madura for disposal.
