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QUEEN-EMPRESS v. BHAWANI.

In the case of *Empress* v. *Vithal Bhaichand* (1) it was held that coins were not an instrument of gaming, and that an instrument of gaming meant an instrument devised and intended for that purpose. In the case of *Watson* v. *Martin* (2) it was held that a person on the high way playing at pitch and toss with half-pence was not liable to conviction under Statute 5 Geo. IV, Cap. 83, s. 4, as being a person "playing with an instrument of gaming." After that decision the statute was amended by 31 and 32 Vict., Cap. 52, and 36 and 37 Vic., Cap. 38. By these Acts, after the words "instrument of gaming" in the old Act, the words "or any coin, card, token, or other article used as an instrument or means of such wagering or gaming at any game or pretended game of chance" have been added. Similarly the Act in force at Bombay has been amended by Bombay Act I of 1890, so as to make the words "instrument of gaming" include any article used as a subject or means of gaming. But the Legislature has not yet seen fit to alter Act No. III of 1867, and, until it does so, I must hold that, although cowries can be used for the purpose of gambling, they are not "instruments of gaming" within the meaning of the Act as it at present stands. The question as to whether the finding of cowries would be sufficient evidence under the Act was mooted in the case of *Empress* v. *Shaker Chand* (3) but was not then decided. I am of opinion that the learned Sessions Judge was right in considering that the offences of which the accused were convicted were not established. I quash the convictions, and direct that the fines, if paid, be refunded, and that the accused Kedar, who was sentenced to two months' imprisonment, be forthwith released.

1895
26th June.

Before Mr. Justice Knox, Mr. Justice Banerji, and Mr. Justice Aikman.

QUEEN-EMPRESS v. CHANDA.

Act XLV of 1860 *(Indian Penal Code), section* 373.—*Obtaining possession of minor for purposes of prostitution—Offences defined by above section explained.*

To constitute the offence provided for by section 373 of the Indian Penal Code it is necessary, first, that a minor under sixteen years of age shall be bought, hired or otherwise obtained possession of, and, secondly, that the minor shall be bought, hired or otherwise obtained possession of with the intent that the same minor while still

(1) I. L. R., 6 Bom., 19. (2) 10 Cox. Cr. Ca., 56.
(3) Weekly Notes, 1882, page 132.

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under the age of sixteen years shall be employed for the purposes of prostitution, or with the knowledge that it is likely that the said minor while still under the age of sixteen years will be employed or used for an unlawful and immoral purpose.

The offence is complete so soon as the obtaining possession, with the requisite intention or knowledge, of the minor is accomplished, though the minor may not enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all. *The Deputy Legal Remembrancer* v. *Karuna Baistobi* (1) approved.

THIS was an application by one Musammat Chanda for revision of a conviction under section 373 of the Indian Penal Code and a sentence of one year's rigorous imprisonment passed by a magistrate of the first class of the Bijnor district and confirmed on appeal by the Sessions Judge of the Bijnor-Budaun Division. It appears that about the year 1889, Gopia, the father of the girl, Dhanni, in respect of whom the offence charged was alleged to have been committed, brought Dhanni from Almora, where she lived, and lodged her in the house of the accused, who was his sister. There was no special arrangement entered into at that time as to the girl's future, but evidence was given to prove that it was the custom amongst the Naik Rajputs that the girls learned singing and dancing when young, and when they arrived at maturity adopted prostitution as a profession, and that Gopia had left Dhanni with Chanda in order that she might be brought up according to the custom of the caste. The evidence as to the girl's age and as to the time when she commenced prostitution was not very precise, but it was not proved that she did in fact commence prostitution before the age of sixteen. On the other hand, Dhanni was undoubtedly much below the age of sixteen years when she was made over to the accused, and although some attempt was made to prove that the accused had dissuaded Dhanni from entering upon prostitution at too early an age for fear of spoiling her voice, no evidence of any specific agreement that such event should not take place until after Dhanni had reached the age of sixteen was given.

Chanda, having been convicted as above described of the offence under section 373 of the Indian Penal Code, applied to the High Court in revision.

Babu *Durga Charan Banerji* for the applicant.

(1) I. L. R., 22 Calc., 164.

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The Officiating Public Prosecutor (Mr. *A. H. S. Reid*) for the Crown.

KNOX, BANERJI and AIKMAN, JJ.—Musammat Chanda was convicted by Kamta Prasad, a Magistrate of the first class, of an offence under section 373 of the Indian Penal Code, and sentenced to rigorous imprisonment for one year. On appeal to the Court of the Sessions Judge of Bijnor-Budaun the conviction and sentence were maintained.

Application is now made to this Court that in exercise of its powers of revision it will reverse the finding and sentence on the ground that:—

(1) There has been no act on the part of Chanda amounting to buying, hiring or otherwise obtaining possession.

(2) There was no distinct arrangement between the petitioner and Gopia, the father of Musammat Dhanni, that Dhanni was to be brought up for prostitution.

(3) That no act of the petitioner has been proved which would bring her case within the purview of section 373, Indian Penal Code.

We may at once say that before an offence under section 373 can be established it must be proved (1) that a minor under sixteen years of age was bought, hired or otherwise obtained possession of by the accused, and, (2) that the minor was bought, hired or otherwise obtained possession of by the accused with the intent that the same minor while under sixteen years of age shall be employed or used for the purposes of prostitution, or with the knowledge that it was likely that the said minor while still under the age of sixteen will be employed or used for an unlawful and immoral purpose.

The learned Public Prosecutor contended that such a construction would be unduly limiting the meaning of section 373. But we cannot overlook the force of the expression "such minor" which is twice repeated in the section. The word "such" in our opinion refers back to the words "under the age of sixteen years," and must be interpreted wherever it occurs in the section as equivalent to those words. The construction we place upon the words is the construction placed upon them by the Calcutta High Court

(1) I. L. R., 22 Calc. 164.

in *The Deputy Legal Remembrancer* v. *Karuna Baistobi* (1). As was pointed out by the learned Judges in the case just cited, at p. 172,— "in order to constitute an offence under section 373, Indian Penal Code, there must be the buying of a minor girl under the age of sixteen years with intent that such minor shall be employed for the purpose of prostitution or with the knowledge or likelihood that she shall be so employed while yet a minor under the age of sixteen. The offence will not be constituted if, notwithstanding the existence of such intention or guilty knowledge, the employment that is intended or known to be likely is to take place after the completion of the sixteenth year by the minor."

In the case before us the girl Dhanni, who describes herself as seventeen years of age, and who says that she developed into a woman two years ago, deposes that according to the universal practice among the caste to which she belongs (the *Naik* Rájputs of Kumaun) when a man marries a woman she lives in *pardah*, but the daughters of the man and woman sing and dance, and when they arrive at the age of puberty (*umr par pahunchtin hain*), prostitute. Dhanni's elder sister has followed this practice, and Dhanni's own father Gopi took her while still a girl from her home in the hills to the house of the accused (her aunt), who admitted that she too has followed the practice above described.

The evidence given by Dhanni is corroborated by Lali, the sister, and by Moti, an aunt of the girl and sister to the accused. Moti adds that Chanda, the accused, "retained Dhanni to make a prostitute of her. Dhanni's father left her here for the same purpose;" and Lali, in a supplementary deposition given on the 5th of September 1894, says that "all the girls that come from the hills first sing and dance, and when arrived at the age of puberty *(jab apni umr par atin hain)* prostitute. For this same object Dhanni's father left Dhanni with Chanda."

All that these witnesses say is corroborated by Chanda in the examinations which from time to time were addressed to her during the course of the trial. Thus on the 4th of September, she

(1) I. L. R., 22 Calc., 164.

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said :—" If a daughter of the *Naik* Rájputs has no prostitute relation, she goes out of the house on coming to age and turns a prostitute. If she have a relation a prostitute in the plains or on the hills, her parents send her to that relation ; she learns singing and playing, and when she grows up she becomes a prostitute." Again, on the 5th of September, she said that " Dhanni's father left Dhanni with her that she might learn singing and playing, and when arriving at the age of maturity (*jawán*) follow the profession of prostitute."

The medical evidence in the case is to the effect that the Civil Surgeon thinks Dhanni about 16 years of age. Girls become of puberty at any age from 11 to 19, and there is no possible means of giving more than a guess of the actual age of the girl. She, the Civil Surgeon adds, is certainly not above 25.

We have it then established by the evidence that the accused did receive Dhanni from her father with the intent that she should follow the practice of the caste and be used as a prostitute as soon as she attained maturity. We have it in evidence that girls in India attain maturity at any time between the ages of 11 and 19, and Dhanni herself says that in her own case she attained maturity when she was 15 years of age.

It is, however, contended on her behalf that there is evidence to show that Dhanni did not as a fact commence prostitution until after she had reached upon the age of 16, and that even then she entered upon this course against the will and advice of the accused.

The exact age, however, at which Dhanni entered upon a course of prostitution is in our opinion immaterial. An offence under section 373, Indian Penal Code, would be, and is, complete as soon as the buying, &c., by the accused and the guilty knowledge or intent on the part of the accused are proved, though the person bought may not enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all.

The mere fact that the accused dissuaded or tried to dissuade the girl from entering upon prostitution while still so young for fear lest her voice as a singer should be spoiled will not remove Chanda's

act from the category of an offence under section 373. The offence was complete and perfected when she took Dhanni over from her father years ago.

The accused does not prove that her intent or knowledge was other than would reasonably be presumed from the evidence given as to the practice prevalent among *Naik* Rájputs, and as to the object with which Dhanni, Lali and Moti all say the girl was left with the accused.

There was a feeble attempt made to contend that the expressions "*umr par ána*," "*jawán*," and "*báligh*" refer to an age far above sixteen. We know of no authority for any such construction. The natural meaning of the word is the arriving at what is known as the age of puberty, and we must take the words in their natural and ordinary sense.

None of the reasons advanced as grounds for interfering are established, and the sentence is certainly not too severe.

We accordingly dismiss the application and direct that the record be returned.

If Musammat Chanda is on bail she must surrender and undergo the remaining term of imprisonment to which she was sentenced.

APPELLATE CIVIL.

1895
July 1.

Before Mr. Justice Knox and Mr. Justice Aikman.

SUBHUDRA AND ANOTHER (DEFENDANTS) *v.* BASDEO DUBE (PLAINTIFF).*

Criminal Procedure Code, section 488—Order for maintenance of wife—such order not affected by declaratory decree of Civil Court.

An order for the maintenance of a wife duly made under section 488 of the Code of Criminal Procedure cannot be superseded by a declaratory decree of a Civil Court to the effect that the wife in whose favor such order has been made has no right to maintenance. *Subad Domni v. Katiraur Dome* (1), referred to.

THE plaintiff in this case had had an order passed against him under section 488 of the Code of Criminal Procedure directing him to pay a certain sum for the maintenance of the first defendant and

*First appeal No. 22 of 1895, from an order of Pandit Indar Narain, Subordinate Judge of Mirzapur, dated the 28th February 1895.

(1) 20 W. R., C. R., 58.