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we dismiss the suit of the plaintiff against the defendants Nos 2 to 5, appellants before us, with costs in all courts. The only remedy which we grant to the plaintiff is a simple money decree. As his suit is within time, the due date for payment under the mortgage being 1923 and the suit having been brought in 1926, the plaintiff is entitled to this simple money decree, and that money decree will be against the assets of Tunde, if any, which are in the hands of his widow Mst. Larhai, defendant No. 1. The costs will also be allowed to the plaintiff against these assets on this simple money decree.

REVISIONAL CRIMINAL.

Before Sir Grimwood Mears, Chief Justice, and Mr. Justice Sen.

EMPEROR *v.* NANHUA DHIMAR AND OTHERS.*

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July, 9.

Indian Penal Code, sections 366, 366A, 368, 372—Procurator of minor girl—Jurisdiction—Place of trial—Continuing offence—Abetment—Criminal Procedure Code, sections 180, 182.

Unlike the offence of kidnapping from lawful guardianship, abduction is a continuing offence, and a girl is being abducted not only when she is first taken from any place but also when she is removed from one place to another. *Ganga Dei v. King-Emperor* (1) and *Sundar Singh v. Emperor* (2), approved. There is a close resemblance in the texts of sections 362 and 366A of the Indian Penal Code and some of the salient ingredients of the two offences are common, and it must be held that an offence under section 366A is also a continuing offence. So, under section 182 of the Criminal Procedure Code, an offence under section 366A can be inquired into or tried by a court having jurisdiction over any of the local areas in which the offence continues to be committed.

Accordingly, where, with the intent or knowledge specified in section 366A, two persons induced a minor girl to leave Moradabad and go with them to Hapur in district Meerut, where they were joined by two other persons, and the four of them took the girl to Hafizabad in the Punjab and there a fifth person joined them, and then all took her to Rampur in the

*Criminal Reference No. 71 of 1930.

(1) (1914) 12 A.L.J., 91.

(2) (1924) 86 Indian Cases, 71.

Punjab and sold her to a man, it was *held* that the offence was a continuing one; the criminal inducement which had commenced at Moradabad did not cease but continued to exist at the other places and all the five were parties to it; and the Sessions Judge of Moradabad had jurisdiction to try all the five persons under section 366A, although the part played by the three persons who joined later was outside the local jurisdiction of his court. *Held*, further, that in accordance with illustration (a) of section 180 of the Criminal Procedure Code the Sessions Judge of Moradabad could try these three persons, in the alternative, for abetment of an offence under section 366A; and that the Sessions Judge of Moradabad would have no jurisdiction to try the accused persons or any of them under section 368 of the Indian Penal Code assuming that the girl was wrongfully concealed or confined at Hapur or Hafizabad or Rampur), or under section 372 of the Indian Penal Code.

THE facts of the case appear from the following referring order.

DALAL, J. :—I have spent some time over the matter with a view to deliver a considered judgment. I think, however, that the matter should be decided with the authority of a Bench of two Judges. Five persons, Nanhua Ahyria, his wife Mst. Sukhao, Nanhua Dhimar, Bihu Chamar and Kesri Chamar, were committed to the court of sessions of Moradabad by a Magistrate of the first class to take their trial on charges in the alternative under sections 366 and 366A of the Indian Penal Code. The learned Judge tried Nanhua Ahyria and his wife separately and convicted them of an offence under section 366A of the Indian Penal Code. I think it would have been better if the conviction had been recorded under section 366. 366A is a new section and, in my opinion, whenever the girl is under sixteen years of age, as in the present case where the girl is only twelve, a trial and conviction should be had under section 366. The learned Judge has referred the case of Nanhua Dhimar, Bihu Chamar and Kesri Chamar to this Court with a recommendation that the commitment may be quashed. Unfortunately the accused persons are not of such a standing that they would be represented by counsel here, but I have received considerable help from Dr. *Wali-ullah*, the Assistant Government Advocate. The main point of the Sessions Judge is that an offence under section 366A is not a continuing one and that it is completed as soon as a minor girl under the age of eighteen years is induced to leave a

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place. According to him the offence does not continue as the girl is taken from place to place. This opinion does not appear to me to be justified by any authority. It is true that the offence of kidnapping is completed as soon as the minor is taken out of the keeping of the lawful guardian. The offence there is committed with reference to the guardian and once a minor is removed from the guardian it cannot be said that the person who subsequently removes her, removes her from the same guardianship. That reasoning however cannot apply to the case of abduction. Abduction is defined in section 362 with reference to the person abducting; whoever by force compels or by any deceitful means induces any person to go from any place is said to abduct that person. A learned Judge of this Court has held the offence to be a continuing one: *Ganga Dei v. King-Emperor* (1); and that opinion was followed by me in Oudh: *Sundar Singh v. Emperor* (2). Neither Dr. *Wali-ullah* nor I have been able to find any other opinion on the subject. The language of section 366A is similar to the language of section 362. It is, "whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act", with a certain intention, is said to be guilty of an offence under section 366A. Here the removal need not be from any particular person like a guardian as in section 361. An inducement to move the girl from one place to another, as in section 362, is sufficient to constitute the offence. By analogy therefore an offence under section 366A would also be a continuing one.

If the offence is held to be a continuing one, the provisions of section 182 of the Criminal Procedure Code will apply: "Where an offence is a continuing one, and continues to be committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas". In the present case what is alleged is that Mst. Ramkali was induced to leave Moradabad and to go to Hapur (within the jurisdiction of the sessions court of Meerut), and from Hapur Nanhua and Bihu along with Mst. Sukhao, who has already been convicted, took her to Hafizabad in the Punjab, outside the jurisdiction of the Moradabad court, and from there Nanhua Ahyria, Bihu and Kesri, along with Mst. Sukhao, took the girl to Rampur in the Gujranwala district in the Punjab. If the offence under section 366A be considered to be a continuing one, then the Sessions Judge of Moradabad would have jurisdiction to try Nanhua Dhimar, Bihu Chamar and Kesri Chamar though their act was committed outside the

(1) (1914) 12 A.L.J., 91.

(2) (1924) 86 Indian Cases, 71.

jurisdiction of the Moradabad sessions court. The question of importance to consider therefore will be whether an offence under section 366A is a continuing one or not.

As I have already pointed out, a charge does lie under section 366 and if the ruling of Knox, J., be accepted, the Sessions Judge of Moradabad will have jurisdiction to try these three persons of offences under that section, even if a distinction be drawn between an offence under section 366A and an offence under section 366.

Another question which will arise here will be whether the provisions of section 368 would apply to a girl induced under section 366A. The words used in section 368 are, specifically, "kidnapped or abducted". Section 366A was added to the Indian Penal Code by Act No. XX of 1923 and it appears that at that time care was not taken to amend section 368. Where a girl is between the age of sixteen and eighteen, neither the offence of kidnapping or of abduction would be committed and in such a case it would be difficult to hold section 368 applicable to a person who conceals or confines a girl so induced. This matter is of considerable importance because the court where kidnapping and abduction takes place has jurisdiction to try every person within or without the jurisdiction of the court who has concealed or confined such kidnapped or abducted person. The illustration (c) of section 180 of the Criminal Procedure Code is, "a charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the court within the local limits of whose jurisdiction the kidnapping took place." In the present case no charge under section 368 of the Indian Penal Code is framed, but if the Magistrate had taken care in the matter it would have been possible to frame a charge under that section, at least against Nanhua Dhimar.

Much difficulty necessarily arises when additions are made to an old Code without care being taken to amend connected sections of the same Code and corresponding sections of the Code relating to procedure.

The learned Judge has raised a question as regards section 372 also. I agree with him that that offence is entirely distinct from offences under sections 362, 366 and 366A. The position is that if any of the persons whose case has been referred to this Court has committed an act which would bring him within the provisions of section 372, the sessions court of Moradabad would not have jurisdiction to try them.

With these observations the matter shall be laid before a Bench of two Judges.

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The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

The opposite parties were not represented.

MEARS, C. J., and SEN, J. :—Nanhua Ahyria, Mst. Sukhao, Nanhua Dhimar, Bihu Chamar and Kesri Chamar were committed to the court of sessions of Moradabad by a Magistrate of the first class of the same district to take their trial on charges, in the alternative, under sections 366 and 366A of the Indian Penal Code.

Mst. Ram Kali is a maiden daughter of one Ganga Ram Ahyria. She is about twelve years old. She lived with her parents at Moradabad. Mst. Sukhao is the sister of Ganga Ram Ahyria, and is the wife of Nanhua Ahyria. Nanhua Ahyria and his wife Mst. Sukhao are residents of Hapur, which is within the jurisdiction of the Sessions Judge of Meerut.

On the 14th of August, 1929, Nanhua Ahyria and his wife came to Moradabad and induced Mst. Ram Kali to leave Moradabad in their company with intent that Mst. Ram Kali may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person. They took her to Hapur where they were joined by Nanhua Dhimar and Bihu Chamar. Nanhua Ahyria, Mst. Sukhao, Nanhua Dhimar and Bihu Chamar took Mst. Ram Kali with them to Hafizabad, a village in the district of Gujranwala in the Punjab. Here they were joined by Kesri Chamar, who is a resident of Hapur. From Hafizabad all the five above-mentioned persons went to Rampur, which is another village in the Gujranwala district, and is fourteen miles from Hafizabad. Here they sold the girl to one Barkat Ram, a Rajput Jat of Rampur, for Rs. 300, representing to him that Mst. Ram Kali was a woman of the same caste as Barkat Ram. About six weeks later, the girl was recovered from the possession of Barkat Ram.

The learned Sessions Judge of Moradabad has tried Nanhua Ahyria and Mst. Sukhao and convicted them

under section 366A of the Indian Penal Code. He has referred the cases of Nanhua Dhimar, Bilu Chamar and Kesri Chamar to this Court with the recommendation that the commitment of these persons be quashed, as no offence was committed by these persons within the jurisdiction of the court of sessions at Moradabad.

This reference came up before Mr. Justice DALAL. He fully considered the questions involved in the reference, and gave his opinion thereon. He, however, referred this matter to a Bench of two Judges. We are in substantial accord with the views of Mr. Justice DALAL.

It is to be remembered that the offence of kidnaping from lawful guardianship is not a continuing offence. As soon as the minor is actually removed out of the custody of his or her guardian, the offence is completed. The offence is not a continuing one as long as the minor is kept out of guardianship. But, unlike kidnaping, *abduction* is a continuing offence, and has been held to be a continuing offence in *Ganga Dei v. King Emperor* (1), which has been followed in *Sundar Singh v. Emperor* (2). It has been held in these cases that a girl is being abducted not only when she is first taken from any place but also when she is removed from one place to another.

There may be abduction without the removal of a person from lawful guardianship. As has been pointed out by Mr. Justice DALAL, there is a close resemblance in the texts of sections 362 and 366A. We are of opinion that some of the salient ingredients of the two offences are common and that we must hold that an offence under section 366A is a continuing offence.

Section 182 of the Code of Criminal Procedure *inter alia* provides that where an offence is a continuing one and continues to be committed in more local areas than one . . . it may be inquired into or tried by a court having jurisdiction over any of such local areas.

(1) (1914) 12 A.L.J., 91.

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The learned Sessions Judge has found that Nanhua Ahyria and Mst. Sukhao had committed an offence under section 366A of the Indian Penal Code within his jurisdiction. The offence being a continuing one, the other persons who joined Nanhua Ahyria and Mst. Sukhao at Hapur and Hafizabad and participated in the sale of the girl to Barkat Ram, are equally guilty with them. Nanhua Ahyria and his wife had prevailed upon a minor girl to leave Moradabad and go with them to Hapur. On reaching Hapur, the inducement which had commenced at Moradabad did not cease but continued to exist. The same inducement continued at Hafizabad and Rampur. If Nanhua Dhimar, Bihu Chamar and Kesri Chamar were parties to the inducement and had prevailed upon the minor girl to go from one place to another with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person, all the ingredients necessary for the offence under section 366A are present in their case. We are, therefore, of opinion that, although the part played by these three persons was outside the jurisdiction of the Moradabad sessions court, the learned Sessions Judge of Moradabad had jurisdiction to try the case against these persons.

There is yet another aspect of the case, which may be considered. The three accused persons either intentionally aided or engaged with Nanhua Ahyria and his wife in the commission of an offence under section 366A. They are clearly guilty of abetment. Illustration (a) to section 180 of the Code of Criminal Procedure is instructive:—"A charge of abetment may be inquired into or tried either by the court within the local limits of whose jurisdiction the abetment was committed or by the court within the local limits of whose jurisdiction the offence abetted was committed." The offence abetted was one under section 366A of the Indian Penal Code which was committed by Nanhua Ahyria and his wife within the

jurisdiction of the Moradabad court. Assuming that the abetment took place either at Hapur, Hafizabad or Rampur, the charge of abetment against Nanhua Dhimar, Bihu Chamar and Kesri Chamar could be inquired into and tried by the Moradabad court within the local limits of whose jurisdiction the principal offence was committed. The learned Sessions Judge may well be justified, if he so choose, in charging these three persons in the alternative for an offence of abetment, that is to say, under section 366A coupled with section 109 of the Indian Penal Code.

In the absence of more detailed particulars it is difficult to say whether any charge could be brought against all or any of the three accused persons under section 368 of the Indian Penal Code. The venue for the trial of a case under section 368 of the Indian Penal Code is evidently the court within whose jurisdiction the kidnapped or abducted person has been wrongfully concealed or confined. If Mst. Ram Kali was wrongfully concealed or confined at Hapur, Hafizabad or Rampur, the court of sessions at Moradabad would have no jurisdiction to try the accused under section 368 of the Indian Penal Code. The offence under section 372 of the Indian Penal Code is distinct from that under section 366A of the Indian Penal Code. All the five accused persons who were committed to the court of sessions could be tried for an offence under section 372 of the Indian Penal Code. This offence however was committed at Rampur and was beyond the jurisdiction of either the court of sessions or that of a Magistrate of the first class of the Moradabad district.

In view of what we have said above, the learned Sessions Judge of Moradabad has jurisdiction to try the case against Nanhua Dhimar, Bihu Chamar and Kesri Chamar under section 366A/109 or 366A of the Indian Penal Code and the trial, therefore, must proceed.

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