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EMPEROR v. ASGHAR

Sulaiman, C. J.

of the opinions expressed previously, I now think that it would be safer to adhere to that view on the principle of *stare decisis* and not make any departure. On reconsideration, therefore, I agree that the opinion that the entire evidence for the prosecution need not be produced before the committing Magistrate should be taken as an *obiter dictum* and not followed in practice. In this case seventeen witnesses had been named in the charge-sheet, out of whom the Magistrate examined only four, two out of these four being of a formal character. Commitment on such incomplete evidence was certainly not contemplated by us.

BY THE COURT:—The answer to the question referred to us is that the Magistrate was bound to complete the rest of the prosecution evidence and allow the accused an opportunity to produce his evidence before committing him to the court of session.

APPELLATE CRIMINAL

Before Mr. Justice Allsop and Mr. Justice Ganga Nath

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November, 19

EMPEROR *v.* NARAIN*

Cantonments Act (II of 1924), section 236(1)—Whether a pimp can be convicted under this section

There is nothing in the wording of section 236(1) of the Cantonments Act which says that the person importuning must importune to the commission of sexual immorality with himself or herself. A pimp who importunes a person to the commission of sexual immorality with some other person is also liable to be convicted under this section.

The Government Advocate (Mr. *Muhammad Ismail*), for the Crown.

Mr. *B. S. Darbari*, for the respondent.

ALLSOP and GANGA NATH, JJ.:—The respondent Narain Kachi was sentenced by a Magistrate in Agra to rigorous imprisonment for a period of one month under

*Criminal Appeal No. 617 of 1935, by the Local Government, from an order of Girish Prasad, Additional Sessions Judge of Agra, dated the 21st of May, 1935.

the provisions of section 236(1) of the Cantonments Act for importuning certain British soldiers to the commission of sexual immorality. He appealed to the Sessions Judge who acquitted him upon a point of law. The section under which the respondent was convicted is in the following terms:—"Whoever in a cantonment loiters for the purpose of prostitution or importunes any person to the commission of sexual immorality shall be punishable with imprisonment which may extend to one month or with fine which may extend to Rs.200."

The charge against the respondent was that he had approached certain soldiers and had offered to supply to them a girl for Rs.2 or a boy for Re.1. The Sessions Judge held that nobody could be convicted under the section unless he was loitering for the purpose of prostituting himself or importuned any person to the commission of sexual immorality with himself. The learned Judge said: "It appears from the scheme of the section that the person importuning any person to the commission of sexual immorality must be the boy or the girl who offers himself or herself for sexual immorality and not a third person who only acts as a go-between." In his opinion the combination of loitering with importuning clearly showed that the person punishable must be the object of the sexual immorality. A Bench of the Bombay High Court in the case of *Emperor* v. *Maridas Lazar* (1), said that it would seem to be desirable that a pimp should be liable to be prosecuted just as well as the woman who was to be the subject of prostitution. We are in agreement with this view and we do not think that there is anything in the wording of the section which justifies the conclusion to which the learned Sessions Judge came. The section does not say that the person must loiter for the purpose of his or her own prostitution or must importune another to the commission of sexual immorality

(1) A.I.R., 1926 Bom., 227.

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with the person so importuning. Even if the charge was one of loitering it does not seem to us that it would necessarily be true that nobody could be prosecuted unless he or she was loitering for the purpose of prostituting his or her own person. We can conceive of a case where a woman loiters as a decoy so that she may give the impression that she is loitering for the purpose of prostitution intending to take any man who accosts her to some house of ill fame where he may have intercourse with some other woman. We are not however in this case to consider whether a person who loiters for the purpose of the prostitution of others is liable to punishment. We are concerned with the second part of the section and it is perfectly clear that there is nothing in the wording which says that the person importuning must importune to the commission of sexual immorality with himself or herself. We cannot read into the section words which are not there.

We are satisfied therefore that the respondent was guilty of the offence with which he was charged if the facts were true.

* * * * *

There remains the question of fact whether the respondent was guilty or not. This was a question which the learned Sessions Judge did not consider. We might send the case back to him in order that he might consider it, but as this is a very small matter and as the evidence is included only in the judgment of the learned Magistrate we think we can go into the question for ourselves.

We have given learned counsel for the respondent an opportunity to discuss the evidence and he has not said anything which would lead us to suppose that the evidence is not true . . . We believe that the respondent did importune the witnesses to the commission of sexual immorality and we are satisfied that he was guilty of the offence with which he was charged.

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The Local Government have appealed against the acquittal. We allow the appeal and find the respondent guilty. He has been sentenced by the learned Magistrate to rigorous imprisonment for a period of one month, the maximum sentence which can be passed. It is urged before us that his was a first offence or at any rate this was a first conviction and that it would be preferable to substitute a sentence of fine for one of imprisonment. We are prepared to accede to this request made on behalf of the respondent. We therefore sentence him under section 236(1) of the Cantonments Act to a fine of Rs.50 and direct that he shall, if he does not pay the fine, suffer rigorous imprisonment for a period of one week.

APPELLATE CIVIL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

1935 *November*, 22

HARISH CHANDRA (PLAINTIFF) *v.* HINDU DHARAM SEWAK MANDAL AND ANOTHER (DEFENDANTS)*

Gift—Specific purpose—Subsequent impossibility of carrying out the purpose—Failure of gift—Conditional gift—General charitable intention absent.

A gift was made of certain land to the Secretary of the Hindu Dharam Sewak Mandal for the express purpose of being used as the site of an *ashram* to be built for imparting training to young Hindu religious reformers; the circumstances did not disclose a general charitable intention. During several years the Mandal did nothing in the way of building the *ashram* and ultimately the Mandal ceased to exist, having been absorbed by the Hindu Maha Sabha. After the death of the donor his son sued to recover the land:

Held, that where a land is given for a specific purpose, and for a specific purpose only, then such gift becomes a nullity if the performance of that purpose is rendered impossible. Such a gift is a conditional one; if the performance of the condition becomes impossible, the gift never really takes effect. In the present case the land having been given not with a

*Second Appeal No. 1014 of 1934, from a decree of I. B. Mundle, District Judge of Saharanpur, dated the 9th of March, 1934, reversing a decree of M. A. Ansari, Subordinate Judge of Dehra Dun, dated the 29th of November, 1930.