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no such custom was set up or proved as would render the marriage invalid.

For these reasons their Lordships hold the marriage to be valid, and they will humbly advise His Majesty that the judgment and the decree pronounced by the High Court should be affirmed and this appeal be dismissed. There will be no order as to costs, as the respondents are not represented before them.

Solicitors for the appellant: *Hy. S. L. Polak & Co.*

The respondents were not represented.

REVISIONAL CRIMINAL

Before Mr. Justice Ganga Nath

1935
September, 6

EMPEROR *v.* MUNSHI RAM AND ANOTHER*

Child Marriage Restraint Act (XIX of 1929), sections 5, 6—What section applicable to the parents performing or conducting child marriage—Question of validity or of consummation of the marriage does not arise.

A marriage between a girl of over 14 years of age and a boy of less than 18 years of age was performed and conducted by their respective fathers. Upon their prosecution under sections 5 and 6 of the Child Marriage Restraint Act, pleas were taken that there was no valid marriage at all as the parties belonged to the same *gotra*, that *gauna* ceremony had not been performed yet, and that the girl not being a "child" as defined in the Act, her father could not be convicted under the Act. *Held*—

(1) That the marriage ceremony having been performed, no question of the validity or the invalidity of the marriage, or of the consummation or absence of consummation thereof, could arise under the Child Marriage Restraint Act; such questions were beyond the scope of that Act.

(2) Section 5 of the Act deals with the persons who perform, conduct or direct any child marriage, and the convictions of the two fathers under that section was valid inasmuch as in the case of Hindu marriages the fathers do perform, conduct and direct the marriage ceremonies. The section is wide enough to cover the cases of the father of the bridegroom and that of the

*Criminal Revision No. 712 of 1935, from an order of I. B. Mundle, Sessions Judge of Saharanpur, dated the 13th of July, 1935.

bride, and the fact that the bride was not a "child" does not affect the question of her father's liability for the child marriage as it was he who gave his daughter in marriage and took part in the marriage ceremonies.

(3) Section 6 of the Act provides for the offence in cases where a minor himself contracts a child marriage. The present case not being such a case, the convictions of the two fathers under that section were illegal.

Messrs. *Saila Nath Mukerji* and *Shri Ram*, for the applicants.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

GANGA NATH, J.:—This is an application in revision by Munshi Ram and Ram Chander against their convictions and sentences under sections 5 and 6 of the Child Marriage Restraint Act (XIX of 1929) which was confirmed in appeal by the learned Sessions Judge of Saharanpur. The daughter of Ram Chander has been married to the son of Munshi Ram. The age of the girl is over 14 years and therefore she is not a child as defined in the Act. The age of the boy was under 18 years and therefore he is a child. A child as defined in the Act means a person who, if a male, is under 18 years of age, and, if a female, is under 14 years of age. It is not denied that the marriage has been performed, but no *gauna* ceremony has been performed as yet. The fact that the *gauna* ceremony has not been performed as yet does not affect the performance of the marriage, which is complete as soon as the ceremony of the marriage is performed. Consummation is not a part of the marriage ceremony.

It has been urged by the learned counsel for the applicants that inasmuch as both the parties to the marriage belonged to the same *gotra*, the marriage was not valid. The Act aims at and deals with the restraint of the performance of the marriage. It has nothing to do with the validity or invalidity of the marriage. The question of the validity or invalidity of the marriage is beyond the scope of the Child Marriage Restraint Act. Marriage is

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performed by the performance of certain ceremonies, which depend on the race and religion of the parties who enter into marriage. As already stated, the marriage ceremony has been admittedly performed.

It was contended by the learned counsel for the applicants that the convictions under sections 5 and 6 were not legal. He urged that section 5 relates to the priests and strangers and not to the parents. He relied on *Ganpatrao Devaji* v. *Emperor* (1). There it was held that section 5 contemplates strangers and excludes those who are punishable under section 3 or section 4 and section 6, that is the bridegroom and the parent or guardian. It was observed: "It is manifest that section 5 is worded in general terms without specifying the particular class of persons intended to be covered by it, whereas section 6 is directed against particular persons, namely a parent or a guardian of a minor who contracts a child marriage. The question is whether the legislature intended to impose a double penalty on the parent or guardian." Sections 5 and 6 deal with different offences. Section 5 deals with the persons who perform, conduct or direct any child marriage. Section 6 provides for the offence in case where a minor himself contracts a child marriage. It is only in the case a minor contracts child marriage that any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable. Section 5 deals with the cases in which the marriage is not contracted by a minor. Section 5 lays down: "Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage." It was urged by the learned

(1) A.I.R., 1932 Nag., 174.

counsel for the applicants that inasmuch as the daughter of Ram Chander applicant was not a child, he could not be convicted. Section 5 is wide enough to cover the case of the fathers of both the bridegroom and the bride. In the case of Hindu marriages it cannot be said that the father of the bridegroom or the bride does not perform or direct the marriage. It is generally the father or the guardian who arranges for the marriage of the boy and takes the marriage party to the house of the bride. It is the father of the bride who takes part actually in the performance of the marriage ceremonies, as it is he who gives his daughter in marriage. Therefore, it cannot be said that Ram Chander did not perform or direct the marriage. There can therefore be no question as regards the legality of the conviction of both the applicants under section 5.

As regards their convictions under section 6, as already stated, it applies to the case in which the child marriage is contracted by the minor. In this case, as the marriage was not contracted by the minor, section 6 does not apply and consequently the convictions of the applicants under this section cannot stand. It is therefore ordered that the convictions and sentences of the applicants under section 5 of the Child Marriage Restraint Act be confirmed but their convictions under section 6 be set aside. As only one sentence has been passed for conviction under both the sections, no order for the setting aside of any sentence for conviction under section 6 is made.