

**THE  
INDIAN LAW REPORTS  
PATNA SERIES.**

**APPELLATE CRIMINAL.**

1932.

January 29.

*Before Courtney Terrell, C.J. and Rowland, J.*

KAULASHIA

v.

KING-EMPEROR.\*

*Penal Code, 1860 (Act XLV of 1860), section 228—marrying a minor girl while in the custody of a guardian appointed by court, whether constitutes an offence under section 228—Contempt of Courts Act, 1926 (Act XII of 1926), applicability of—section 2(3), significance of—single act, whether may be both an offence under Penal Code and a contempt of court.*

Where K gave away in marriage a minor girl while she was in the custody of a guardian appointed by the court, the appointment being well understood to involve the forbidding of anybody to deal with the minor by marriage or otherwise while she was under that guardianship.

*Held*, that the conduct of K was merely a disobedience of the order of the court, and did not constitute an offence punishable under section 228 of the Penal Code, 1860.

*Held, however*, that the facts of the case attracted the operation of the Contempt of Courts Act, 1926, which empowers the High Court to punish the contempts of courts subordinate to it in just the same way and in just the same circumstances as if the contempt had been of the High Court itself.

Section 2(3) of the Contempt of Courts Act, 1926, provides :

“ No High Court shall take cognisance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.”

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\* Criminal Appeal no. 311 of 1931, against an order of Rai Bahadur A. N. Chatterji, Esq., District Judge of Gaya, dated the 9th October, 1931.

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*Held*, that the meaning of clause (3) of section 2 is that where under the Penal Code there is already a provision for punishing a contempt of court as a contempt of court, the Contempt of Courts Act itself shall have no application; it does not mean that when the act which has constituted the contempt of court also constitutes an offence under the Penal Code it may not be punished under the Contempt of Courts Act.

A single act may be both an offence under the Penal Code and may also be a contempt of court and may be punishable in either or both capacities.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C.J.

*W. H. Akbari and S. A. Khan*, for the appellants.

*Assistant Government Advocate*, for the Crown.

COURTNEY TERRELL, C.J.—This is an appeal from an order of the District Judge of Gaya directing a complaint against the appellants for the offence of contempt of court. The circumstances which gave rise to the order may for all material purposes be shortly stated. There is a minor girl named Mahmudan. She is the daughter of a woman named Kaulashia who was a widow and who has married or is living with a man named Nooruddin. An application was made before the District Judge by the sister of Kaulashia, named Naulashia, that the minor girl be removed from the custody of her mother on the allegation that the mother was living a life which rendered her an unsuitable custodian for her daughter. Opposition was entered to that application by the mother. Ultimately on the 30th June, 1931, Naulashia filed a petition stating that she had taken charge of the minor on the 24th June, 1931, and she undertook before the judge not to marry the minor without the permission of the court. The learned judge directed that that petition should remain upon the file of the court and it appears to have been taken by all the parties that until further orders Musammat Naulashia was to act as the guardian of the person of the minor. Indeed on the 22nd August Musammat Naulashia put in a petition asking that her name be cancelled from her guardianship and that her brother

Chandu Mian may be appointed guardian. In that state of affairs Musammatt Kaulashia, the mother of the minor, and the man Nooruddin with whom she was living, appear to have effected the marriage of the minor with a person whom they considered to be a suitable match but the young girl was not sent to her husband and we are informed that she remains in fact under the custody of the mother and has remained throughout under the custody of the mother notwithstanding the order of the court on the 30th June that Musammatt Naulashia should be appointed guardian.

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An application was made by Chandu Mian that the mother and Nooruddin, having removed the child from the custody of her maternal aunt and given her away in marriage, had committed contempt of court and should be punished. The learned District Judge after deciding that a contempt of court had in fact been committed made an order for a complaint to be lodged against the mother and Nooruddin under section 476 of the Criminal Procedure Code alleging an offence by the accused persons under section 228 of the Indian Penal Code, that is to say, for having committed the offence of intentionally offering an insult to a public servant whilst sitting in a stage of a judicial proceeding. It is perfectly clear that whatever offence has been committed by Kaulashia and Nooruddin it is not an offence under section 228 of the Indian Penal Code. The insult or interruption of a public servant while sitting in a judicial proceeding is not a phrase which applies to conduct of this kind which is merely a disobedience of the order of the court by marrying the minor while she was in the custody of a guardian appointed by the court, the appointment of a guardian being well understood to involve the forbidding of anybody to deal with the minor by marriage or otherwise while she was under that guardianship. The attention of the learned judge was not called to the provisions of the Contempt of Courts Act (XII of 1926). This was an Act which was passed to remedy a defect in the law which was disclosed by a decision of the High Court of Calcutta

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in the course of which it had been decided that the superior courts possess no inherent right to punish contempts committed against the lower courts and it empowered the High Court to punish contempts of courts subordinate to it in just the same way and in just the same circumstances as if the contempt had been of the High Court itself subject to a limitation as to the extent of the punishment.

It was suggested in the course of the argument that possibly the Contempt of Courts Act was not applicable to circumstances like the present because the taking away of the minor girl from lawful custody and marrying her to someone else was already an offence punishable under the Indian Penal Code and attention was directed to sub-section (3) of section 2 which says that

“No High Court shall take cognisance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.”

But the meaning of that clause is that where under the Indian Penal Code there is already a provision for punishing a contempt of court as a contempt of court the Contempt of Courts Act itself shall have no application. It does not mean that when the act which has constituted the contempt of court also constitutes an offence under the Indian Penal Code, it may not be punished under the Contempt of Courts Act. Indeed it has already been held by this Court that a single act may be both an offence under the Indian Penal Code and may also be a contempt of court and may be punishable in either or both capacities.

The best course to take in the peculiar circumstances of this case and having regard to the very humble position of the parties is to allow this appeal so that the criminal proceedings founded upon the complaint of the District Judge may come to an end, to accept the undertaking which has been offered to us by learned Counsel on behalf of the appellants that pending the order of the District Judge they will not part with the custody of the ward, that they will

not allow her husband to have access to her nor will they allow anybody else to interfere with her and that they will produce her as and when required by this Court or by the District Judge. We will direct the District Judge to proceed at once with the appointment of a suitable guardian for the minor in his discretion. It must be distinctly understood that if Musammatt Kaulashia or Ncoruddin commit the slightest breach of the undertaking offered by them they will be committed to prison.

When the matter of the appeal came up for admission we directed a rule to issue against the appellants to shew cause why they should not be punished under the Contempt of Courts Act. In the circumstances we see no reason to proceed further with that matter and the rule is discharged.

ROWLAND, J.—I agree.

*Order accordingly.*

## REFERENCE UNDER THE INCOME-TAX ACT, 1922.

*Before Courtney Terrell, C.J. and Fazl Ali, J.*

MAHARAJADHIRAJ OF DARBHANGA

*v.*

COMMISSIONER OF INCOME-TAX.\*

*Income-tax Act, 1922 (Act XI of 1922, as amended by Act III of 1928), section 26(2), meaning and significance of—"succession" what amounts to—test—legal opinion, statement of, in petition, whether proper.*

Section 26(2) of the Income-tax Act, 1922 (as amended by Act III of 1928), provides :—

"Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year."

*Held, (i) that the words "where at the time of making an assessment under section 23" merely mean "when the time comes to make an assessment";*

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\* Miscellaneous Judicial Case no. 41 of 1931.