REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

GAJJA NAND AND KIRPA RAM,—*Petitioners.*

versus

THE CROWN—*Respondent.*

1921

July 21.

Criminal Revision No. 339 of 1921.

Indian Penal Code, sections 494-114—Abetment of Bigamy—Hindu father marrying his minor daughter to a man after she had been married by her mother to some one else—validity of former marriage—Hindu Law.

Mussammat D, the wife of Gajja Nand, one of the petitioners, having left her husband's house with her minor daughter, performed the marriage of the daughter with one P. The father hearing of this applied to a Magistrate for a warrant under section 100, Criminal Procedure Code, and thereon the girl was handed over to him, and a few months later she was married by him to one Kirpa Ram, the second Petitioner. The father and Kirpa Ram were then prosecuted for abetting the offence of bigamy and convicted.

Held, that although a Hindu father is the proper person to give his daughter in marriage, the rule is now firmly established that a marriage, which is duly solemnised and is otherwise valid, is not rendered void because it was brought about without the consent of the guardian in marriage or even in contravention of an express order of the Court.

Mussammat Maya Devi v. *Ram Chand* (1), followed.

Held also, that even if the marriage was brought about by fraud and might on that account be declared invalid, it was not a nullity and is binding until it is set aside by a competent Court, and that unless it is declared to be invalid it can sustain an indictment for bigamy and the Petitioners were therefore rightly convicted.

Application for revision of the order of Rai Bahadur Lala *Sri Ram* Poplai, *Sessions Judge, Hissar, dated the 15th December 1920, affirming that of* Lala *Radha Kishen, District Magistrate Hissar, dated the 2nd September 1920, convicting the Petitioners.*

BEVAN-PETMAN and NANAK CHAND, for Petitioners.

DES RAJ, Sawhney, for Complainant.

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SIR SHADI LAL, C. J.—This criminal case arises out of an unfortunate dispute between a Hindu wife and her husband regarding the right to give their daughter in marriage. It appears that the wife, *Mussammat* Haryan, fell out with her husband, Gaja Nand, probably on account of the latter having married another wife, and that she left her husband's house and migrated with her minor daughter, *Mussammat* Dhapan, to the house of her brother, Ballu. While she was there, she, probably instigated by her brother, performed the marriage of *Mussammat* Dhapan, who was only nine years old, with one Pirbhu, a man of 40 years of age. There is some evidence to the effect that the child was practically sold to this man who himself admits that he paid Rs. 5,000 as a *quid pro quo* for the girl.

The father, when he learnt of this unfortunate affair, made an application to a Magistrate who issued a warrant under section 100 of the Criminal Procedure Code. Thereupon Ballu appeared with the girl and handed her over to her father. The latter a few months afterwards solemnized the marriage of his daughter with one Kirpa Ram, and it is this second marriage which has led to the prosecution of the father and Kirpa Ram for abetting the offence of bigamy.

The Courts below have held that the charge of abetment has been established, and after giving my careful and anxious consideration to all the circumstances of the case and to the law bearing upon the subject, I concur in the conclusion reached by them. There can be no doubt that the marriage of a girl of nine years with a man of 40, prompted as it was by the cupidity of her maternal uncle and by the resentment of her mother against her husband, was not in the interests of the girl; but the crucial question for determination is whether it was a void transaction and had consequently no existence in the eye of the law. Now, it has been found as a fact that the mother actually celebrated the marriage, and the presumption is that the usual ceremonies were performed.

The law is perfectly clear that the father is the proper person to give his daughter in marriage, and

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that unless the father has deserted his wife and daughter, the mother cannot give the daughter in marriage without the consent of the father. But a Hindu marriage is a sacrament and the rule is now firmly established that a marriage which is duly solemnized and is otherwise valid, is not rendered invalid because it was brought about without the consent of the guardian in marriage or even in contravention of an express order of the Court, *vide inter alia*, *Mussammat Maya Devi and another*, v. *Ram Chand* (1).

It is, however, contended that the mother and her brother brought about the marriage by fraud, but the simple answer to this contention is that, though a marriage may on that account be declared to be invalid, it is not a nullity. A marriage tainted by fraud is a voidable transaction, but it is binding until it is set aside by a competent Court. Unless it is declared to be invalid it can sustain an indictment for bigamy.

While sympathising with the father, I find no valid reason for dissenting from the conclusion that he has infringed the provisions of the law. I must, therefore, confirm the conviction and dismiss the application for revision.

Revision rejected.

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(1) 20 P. R. 1916.