

but it will be observed that the judgment in that case practically proceeds on the basis of the earlier judgment of 1913 in which the right of pre-emption was admitted.

The defendant, on the other hand, has produced some evidence to show that many sales have taken place in this *Mohalla* without the exercise of the right of pre-emption. In these circumstances I do not think that one or two solitary instances of the admission of the custom supported by a few instances in the neighbouring sub-divisions are sufficient to discharge the *onus* of proving the existence of the custom in *Mohalla* Bagarian which lay heavily upon the plaintiffs. In my opinion the District Judge was right in holding that the plaintiffs had failed to establish the prevalence of the custom in this *Mohalla*, and I dismiss the appeal with costs.

A. B.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Scott-Smith.

NIZAM DIN—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 1761 of 1922.

Indian Penal Code, section 283—Extortion—Nikah Khawan refusing to perform the marriage ceremony unless he was first paid a fee.

Held, that a *Nikah Khawan* is not bound to read a *Nikah* for a person unless he chooses to do so, and it is no offence for him to demand any fee he likes for doing so.

Case reported by D. Johnstone, Esquire, Sessions Judge, Multan, with his No. 216-J. of 1922.

The report of the Sessions Judge runs as follows:—

The accused on conviction by *Khon Sahib Maulvi Ghaus Bakhsh*, exercising the powers of a Magistrate, 1st class, in the Muzaffargarh District, was sentenced by

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order, dated 30th August 1922, under section 384 of the Indian Penal Code.

NIZAM DIN,

v
THE CROWN.

The facts of this case are as follows :—

Nizam Din, the accused petitioner, is a *Nikah Khawan*. Allah Rakhiya, the complainant, engaged the petitioner to read the *nikah* for the complainant's younger brother. When the people were collected, the petitioner refused to perform the ceremony and enter the marriage in his register unless he was first paid Rs. 5. A great deal of dispute ensued and eventually the complainant paid Rs. 5 and the marriage was performed. The petitioner said that he had received only Rs. 2, of which he himself had to get Re. 1, the remainder being spent on payment to the *girdawar* of the *Nikah Khawans*, the *chaukidar* and for postage expenses. The petitioner was prosecuted by the complainant for extortion. The Honorary Magistrate came to a finding that Rs. 5 had actually been paid by the complainant to the petitioner and convicting the petitioner under section 384, Indian Penal Code, sentenced him to pay a fine of Rs. 15, in default of payment to undergo 2 weeks' rigorous imprisonment. The evidence for the prosecution is, in my opinion, credible. Several respectable persons deposed that Rs. 5 had actually been paid after protest to the petitioner, and I consider that the Magistrate came to a correct finding on facts.

The proceedings are forwarded for revision on the following grounds :—

The definition of extortion in section 383, Indian Penal Code, runs :—

“Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person put in fear, etc.”

In cases under this section the threat must be of an injury, which means a harm illegally caused. Now, in the present case, doubtless harm was caused to the complainant and the persons attending the marriage : but it cannot be said that the harm was caused illegally. The District Board of Muzaffargarh has laid down certain rules, a copy of which is on the record, regarding the registration of marriages.

Rule 9 reads:—“ At the time of performing a marriage the *Nikah Khawan*, in addition to his customary dues, will get 6 *annas* more for every marriage, which will be distributed as follows :—

“ *Girdawar Qazi*, 4 *annas*, District Board fee, $1\frac{1}{2}$ *annas*, postage stamps, $\frac{1}{2}$ *anna* ”.

Now, it is nowhere laid down what the customary dues are, and theoretically a *Nikah Khawan* might demand any fee that he likes. There is no law forbidding him to do so. His demand for Rs. 5 was not illegal, because his due is not prescribed by law. The petitioner's action did not put anyone in fear of such an injury as is contemplated in section 383, Indian Penal Code, and I therefore forward the record to the High Court and recommend that the conviction be set aside and the fine, which has been paid, be refunded.

SCOTT-SMITH J.—A *Nikah Khawan* is not bound to read a *Nikah* for a person unless he chooses to do so, and it is certainly no offence for him to demand any fee he likes for doing so. I agree with the learned Sessions Judge and setting aside the conviction and sentence acquit Nizam Din. Fine if paid will be refunded.

C. H. O.

Revision accepted.

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NIZAM DIN
v.
THE CROWN.