

of the record, the learned Magistrate has noted that the accused "denied that he had carried 30 passengers instead of 19 in his lorry on the 20th of December 1932 and that some of the passengers sat on the top," as was deposed to by the solitary witness for the prosecution. If he denied this allegation it is difficult to understand what the words "pleads guilty" meant.

The case has been tried very unsatisfactorily and must be remitted to the trial Magistrate for fresh decision after recording the statement of the accused in his own words and his defence evidence, if any.

A. N. C.

Revision accepted.

Case remanded.

REVISIONAL CRIMINAL.

Before Tek Chand J.

THE CROWN—Petitioner

versus

CHAND MAL (ACCUSED), Respondent.

Criminal Revision No. 802 of 1933.

Indian Child Marriage Restraint Act, XIX of 1929, section 10: Cognizance of an offence—without preliminary enquiry under the section—legality of.

Held, that under the provisions of section 10 of the Child Marriage Restraint Act, the Court taking cognizance of an offence under the Act is bound to hold a preliminary enquiry before taking action, unless it dismisses the complaint under Section 203 of the Code of Criminal Procedure.

Mangal Ram v. Kalu (1), followed.

Case reported by Mr. R. B. Beckett, Sessions Judge, Delhi, with his No. 599 of 19th/22nd May, 1933, for orders of the High Court.

1933

KARAM DIN
v.

THE CROWN.

TEK CHAND J.

1933

Sept. 12.

1933

THE CROWN
v.
CHAND MAL.

Nemo, for Petitioner.

SHAMAIR CHAND and BHAGWAT DIYAL, for Respondent.

Report of the Sessions Judge, Delhi.

The facts of this case are fully given in the order of the learned District Magistrate which is as follows :—

Amba Parshad filed a complaint before me under section 6 of the Child Marriage Restraint Act, XIX of 1929, against *Seth Chand Mal, Goenka, and Seth Chimanlal, Bhartiya*. The complainant eventually proceeded against *Seth Chand Mal* alone. Summonses to both accused were issued by me on 5th December, 1932, and Chand Mal subsequently appeared in obedience to the terms of the summons. As the whereabouts of the other accused were not known the complainant withdrew his complaint against him. It was subsequently brought to my attention by counsel for the accused that summonses could not legally issue since no preliminary enquiry as required by section 10 of the Child Marriage Restraint Act was first made by me, although this is obligatory under the law.

In a similar case it was held by the Lahore High Court, *vide Mangal Ram v. Kalu* (1), that under section 10 of the Child Marriage Restraint Act, the Court taking cognizance of an offence under this Act is bound to hold a preliminary enquiry before taking further action unless it dismisses the complaint under section 203 of the Code of Criminal Procedure. In this case the District Magistrate, Karnal, forwarded the proceedings to the Sessions Judge and brought to his notice that he had not complied with section 10 of

(1) (1931) I. L. R. 12 Lah. 383.

the Act, since he had no authority to cancel the summonses already issued.

Counsel for the complainant agreed that an illegality had been committed, and urged that the matter should be brought to the attention of the Sessions Court in order that the High Court might be moved to set aside the illegal order directing the issue of summonses, and direct that a further enquiry should be held into the case according to law.

Counsel for the accused, however, argued that the District Magistrate was not competent to examine his own proceedings and report under section 438 (1), Criminal Procedure Code. In a Ruling, however, by the Allahabad High Court, *Emperor v. Radha Ramnan Mitra* (1), it was held that although it is unusual for a judge to make a reference regarding the legality of his own order, yet there is nothing in section 438 to preclude him from doing so. The words "or otherwise" are wide enough to cover such a reference.

This recent Ruling appears to me to entirely cover the circumstances of this case. The case reported by the District Magistrate, Karnal, referred to above, was also of a precisely similar nature. I am, therefore, reporting the case to the Sessions Judge, and requesting him to move the High Court to direct that a further enquiry shall be made into the case.

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

For the reasons given in the order of the District Magistrate, dated 3rd March, 1933, I report the case for orders of the High Court with the recommendation that the order for issue of summons be quashed.

(1) 1930 A. I. R. (All.) 817.

1933

ORDER OF THE HIGH COURT.

THE CROWN
v.
CHAND MAL.
TEK CHAND J.

TEK CHAND J.—I accept the recommendation of the learned Sessions Judge and set aside the order of the District Magistrate directing the issue of process. I also order that the case be remitted to the District Magistrate for holding a preliminary enquiry under section 10 of the Act. Let the records be returned at once.

A. N. C.

Revision accepted.

APPELLATE CIVIL.

Before Addison and Currie JJ.

1933

Oct. 2.

BISHNA, DECEASED, (THROUGH HIS REPRESENTATIVES)
AND OTHERS (DEFENDANTS) Appellants

versus

COMMITTEE OF GURDWARA, SUDHAL.
AND OTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 2075 of 1928.

Sikh Gurdwaras Act, VIII of 1925, Section 3 (1): Defective list of properties—No mention of, or notice to, real owners—but to two servitors of the Gurdwara—who made no claim—Section 32 (2): whether claim of Gurdwara should be decreed against the owners—who had no knowledge of the matter—Proviso to Section 32 (2). whether applicable—Section 34: Procedure—when Proviso is applicable.

The property in dispute between the management of Gurdwara Sudhal and the village proprietors was the *shamilat* of village Sudhal. The property was shewn in the list of properties claimed under section 3 (1) of the Sikh Gurdwaras Act, as being 436 *bighas*, 6 *biswas* 'belonging to the Gurdwara,' and as being in possession of two persons who were servitors of the Gurdwara. There was no mention of the land being *shamilat* nor was a copy of the relevant entry in the Record of Rights attached thereto. Notice was issued