

it does so, within the meaning of section 244. The Allahabad High Court takes the same view in dealing with an application under section 545 for stay of execution—*Ghúzidin v. Fakir Bakhs*⁽¹⁾.

1886.

RANGJI

v.

BHA'JI
HARJIVAN.

(1) I. L. R., 7 All., at p. 76.

CRIMINAL REFERENCE.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

QUEEN-EMPRESS v. RAKMA' KOM SADHU.*

Indian Penal Code (Act XIV of 1860), Secs. 269 and 417, 420—Communicating syphilis by the act of sexual intercourse—Cheating.

1886.

September 30.

A prostitute, who while suffering from syphilis communicates the disease to a person who has sexual intercourse with her, is not liable to punishment under section 269 of the Indian Penal Code (Act XLV of 1860) "for a negligent act and one likely to spread infection of any disease dangerous to life."

Semle—She may be charged with cheating under section 417 or 420, if the intercourse was induced by any misrepresentation on her part.

THIS was a reference, under section 438 of the Criminal Procedure Code (Act X of 1882), by G. F. M. Grant, District Magistrate, Sátára.

The accused was a prostitute. She was charged with having communicated syphilis to the complainant, William Giffard, and was convicted under section 269 of the Indian Penal Code, by Ráv Bahádur K. M. Thatte, Magistrate (First Class), for the reasons stated by him as follows:—

"It has been established that the prosecutor had sexual connexion with the prisoner alone, that she was suffering from primary syphilis dangerous to life on the date she had connexion with the prosecutor, that she told the prosecutor that she was healthy, and that the prosecutor got the disease from her.

"The prisoner makes no defence, and admits that she did suffer from syphilis. She is found guilty."

* Criminal Reference, No. 103 of 1886

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Thereupon the District Magistrate made the following reference :—

“ I think the decision is erroneous on several grounds, the first being that section 269, Indian Penal Code, was not apparently framed with a view of including cases of this kind.

“ The woman’s share in such connection cannot, in my view, be called an act, nor by any construction can she be held guilty of an ‘ illegal omission.’ In any case, ‘ negligence’ is not an element in such an act, supposing the woman to know that she is diseased, as is here alleged. Of the two sections 269 and 270, the latter would seem the more applicable, though I do not believe either was intended to apply.

“ The trial having been summary, there is no record of evidence beyond column 8 of register, from which I consider it by no means clear that the woman knew she was diseased at the time when the connection took place. Her admission at the time of trial, that she suffered from syphilis, would not establish this point.

“ It is evident, however, that the Magistrate took no evidence on the important issue, whether or not the act was likely to spread a disease ‘ dangerous to life.’ I have thought it right to include, in the papers, a letter addressed by the officer commanding the troops at this station to Mr. Thatte, which affords *prima facie* grounds for believing that it was not so. If the sore was ‘ not of a true syphilitic nature’, the charge seems to fall to the ground.

“ I believe that the question whether syphilis, whatever may be its primary character, is dangerous to life, has not been decided; and as it may perhaps be raised, I would request that such date may be fixed for disposing of this reference as may allow of argument in support of the conviction, should Government think proper to instruct counsel to appear.”

Hon. Rāv Sāheb V. N. Mandlik, for the Crown, referred to the *Queen-Empress v. Krisnappa*⁽¹⁾ and Russel on Crimes Vol. I, p. 267.

There was no appearance for the accused.

(1) I. L. R., 7 Mad., 276.

WEST, J.:—Assuming that there was dangerous disease and culpable negligence, still accused's act of sexual intercourse would not spread infection without the intervention of the complaining party, himself a responsible person and himself generally an accomplice. If there was an offence in this case, it was one of cheating punishable under section 417 or 420 of the Indian Penal Code. To establish this, there should be evidence believed by the Magistrate that the intercourse was induced by misrepresentation on the part of the diseased person. We, therefore, reverse the conviction and sentence.

Conviction and sentence reversed.

INSOLVENCY JURISDICTION.

Before Mr. Justice Scott.

IN *RE* ALLA'DINBHOY HUBIBHOY, INSOLVENT.

RAHMUBHOY HUBIBHOY, OPPOSING CREDITOR.

Insolvency—Indian Insolvent Act (Stat. 11 and 12 Vic., Cap. 21, Sec. 36)—Order to examine witnesses under Section 36—Discovery of insolvent's property—Bond-fide creditor—Practice—Conduct of examination.

When the Official Assignee makes or supports an application to examine witnesses under section 36 of the Indian Insolvent Act, such application should be readily granted. When it is made by any other person, the grounds of the application should be carefully sifted, and the Court should satisfy itself that the inquiry will probably lead to some benefit to the creditors or estate, and is not merely made to harass and annoy the persons proposed to be examined.

A. became insolvent in 1866, and fled out of the jurisdiction. In July, 1886, Rahmubhoy, alleging himself to be a creditor of the insolvent's estate, obtained an order, under section 36 of the Indian Insolvent Act (Stat. 11 and 12 Vic., cap. 21), directing the examination of the insolvent's son and daughter, Rahimbhoy and Lábái, with a view to the discovery of certain property of the insolvent which might be made available for the creditors. Rahimbhoy and Lábái subsequently obtained a rule *nisi* to set aside the order. They filed affidavits, alleging that Rahmubhoy (the applicant) was not a *bond-fide* creditor of the estate; that although he had, no doubt, bought a claim upon the estate in his own name, he was merely a nominee of his brother, Ahmedbhoy, who had supplied the purchase-money; and they alleged that this application was the result of a family quarrel; and was made merely from motives of ill-will. The Court held that the applicant was not a *bond-fide* creditor of the estate. The order for examination was, however, supported by the Chartered Mercantile Bank, which was admittedly a *bond-fide* creditor.

1886.

QUEEN
EMPERESS
v.
RAKMA

1886.

September 8.