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must necessarily involve the means adopted for carrying out or executing the agreement, and that if those means prosecuted to their fulfilment do not result in the carrying out of the agreement, the offence of criminal conspiracy could not be committed. In other words, it is suggested that the feasibility of attaining the ultimate object is the principal ingredient in the offence of criminal conspiracy. That would be a consideration in a charge of attempt to murder and, in my opinion, the argument overlooks the plain provisions of s. 120A of the Indian Penal Code. The offence of criminal conspiracy is a highly technical one and the essential ingredient is the agreement to commit an offence, irrespective of the means decided upon to carry out the object of the conspiracy. Whether those means are legal or innocuous, would not affect the question of criminality.

Order accordingly.

Y. V. D.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Wassoodew.

1940
June 27

EMPEROR *v.* FULBHAI BHULABHAI JOSHI AND ANOTHER, OPPONENTS (ORIGINAL ACCUSED NOS. 2 AND 3).*

The Child Marriage Restraint Act (XIX of 1929), ss. 5, 6—Parents of bride participating in "Kanyadan" ceremony—Whether such participation constitutes "performing, conducting or directing" a child marriage.

A mere participation in the "Kanyadan" ceremony of marriage of a Hindu does not constitute "performing, conducting or directing" a child marriage within s. 5 of the Child Marriage Restraint Act, 1929.

The words "perform, conduct or direct" are used in relation to the ceremony and according to Hindu Shastras, a marriage consists of two parts, the spiritual which according to the orthodox rites is the essential part, and the secular, the immaterial part. The mere participation in the latter ceremony would not offend against the provisions of s. 5 of the Child Marriage Restraint Act, 1929.

*Criminal Appeal No. 78 of 1940.

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Ganpatrao v. *Emperor*,[1] and *Public Prosecutor* v. *Rattayya*,[2] approved.

Munshi Ram v. *Emperor*,[3] disapproved.

APPEAL by the Government of the Province of Bombay, against the order of acquittal passed by B. D. Mirchandani, Sessions Judge of Kaira at Nadiad.

One Someshwar Mathurbai (accused No. 1) got his son bethrothed to the daughter of Fulbhai Bhulabhai (accused No. 2). The marriage took place on May 2, 1938. At that time the bride was over 14 years of age and the bridegroom was under 18 years.

Someshwar (accused No. 1) and Fulbhai and Bai Rewa (accused Nos. 2 and 3), parents of the bride, and Dahyabhai Bogaham (accused No. 4), who officiated as a priest at the marriage ceremony, were prosecuted for offences punishable, under ss. 5 and 6 (*1*) of the Child Marriage Restraint Act, 1929.

Accused pleaded not guilty.

The First Class Magistrate, Kaira, held Someshwar (accused No. 1) guilty of the offence under s. 6 of the Act, and sentenced him to pay fine of Rs. 400 ; the other accused person were convicted under s. 5, the magistrate having held that accused Nos. 2 and 3, parents of the bride, assisted by the priest accused No. 4, performed the Kanyadan ceremony, a ceremony without which a Hindu marriage cannot take place. They were sentenced to pay different amounts of fine.

The accused appealed to the Sessions Judge of Kaira. The Judge confirmed the conviction and sentence passed against accused Nos. 1 and 4, but he acquitted accused Nos. 2 and 3 as in his opinion s. 5 of the Child Marriage Restraint Act, 1929, applied only to an officiating priest or a person who performed or conducted the marriage in a similar capacity, and that the section was inapplicable to the parents

(1) (1932) 34 Cri. L. J. 311. (2) [1937] Mad. 854.
(3) [1936] A. I. R. All. 11.

of the bridegroom or bride. He referred to the rulings in *Ganpatrao* v. *Emperor*,[1] and *Public Prosecutor* v. *Rattayya*.[2]

The Government of the Province of Bombay appealed against the order of acquittal in favour of accused Nos. 2 and 3.

R. A. Jahagirdar, Government Pleader, for the appellant.

M. R. Vidyarthi (appointed), for the accused.

WASSOODEW J. This is an appeal by the Government of Bombay from the order of acquittal, passed by the Sessions Judge of Nadiad in appeal, in a case in which the opponents and two others were tried under the Child Marriage Restraint Act (XIX of 1929) for performing a child marriage. The opponents were the parents of the bride who was above the prohibited age. She was married on May 2, 1938, to a husband who was below that age. The latter's father was accused No. 1 and the priest who officiated was accused No. 4 at the trial. Accused No. 1 alone was charged with the offence under s. 6 as a parent who had permitted the child marriage to be solemnized, and the remaining accused including the opponents were charged under s. 5. The learned Magistrate convicted accused No. 1 under s. 6 and the rest under s. 5 of the Act. In his opinion the opponents, although they are not the parents of the bridegroom, who is a 'child' within the meaning of the Act, were present and had taken part in certain ceremonies such as 'Kanyadan' or the gift of the bride at the time of the ceremony, and were therefore liable. There is no suggestion that they performed any ceremony. The learned Sessions Judge took a contrary view because, in his opinion, s. 5 contemplated punishment of those who solemnized a child marriage, such as a priest or a Kazi or a Vakil, and did not apply to the parents of the parties to the marriage, and that s. 6 only applied to the parents of a child.

[1] (1932) 34 Cri. L. J. 311. [2] [1937] Mad. 854.

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The question before us is whether the opponents by permitting their daughter to be married to a child and giving her away have committed the offence under s. 5 of the Child Marriage Restraint Act. There is no question arising about the legality of the conviction of accused Nos 1 and 4. Section 5 says :—

"Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment . . . unless he proves that he had reason to believe that the marriage was not a child marriage."

Apart from authority upon the plain provisions of the section, the question is largely one of fact whether the opponents 'performed, conducted or directed a child marriage'. 'Child marriage' is defined in s. 2(*b*) as meaning a marriage to which either of the contracting parties is a child, that is, either of the parties whose marriage is solemnized. 'Child' under the Act means a person who, if a male, is under eighteen years of age, and if a female, is under fourteen years of age. It is common ground that the bridegroom alone is a child while the bride is not. Opponent No. 1, the bride's father, had, as I have already stated, taken part in the "Kanyadan" ceremony. The magistrate notwithstanding the denial of the mother has held that she too participated in the said ceremony. The question is whether such participation constitutes 'performing, conducting or directing' a child marriage within s. 5. To my mind the words 'perform, conduct or direct' in the section bear the same import and mean working towards the end, that is completing the union; and are used by the Legislature to indicate the solemnization of the marriage. That in my opinion is the ordinary interpretation of those words. They do not suggest the arranging of marriage merely or attending a marriage ceremony with a view to assisting in the solemnization of the marriage. Even if the words are capable of diverse constructions, that is not a construction which is recommended by and derived from the policy

of the law. From the heading or the marginal note of the section, it would appear that the section is intended to punish 'the solemnizing a child marriage'. It is true that a marginal note cannot be looked at for interpreting the provisions of a section. But where, as here, a possibility of ambiguity may arise by the use of the words 'perform, conduct or direct', I think the marginal note could be used to clear it.

Ordinarily among Hindus—the parties here are Gujrathi Brahmins—a marriage is solemnized by a priest and never by parents. The words 'perform, conduct or direct' are used in relation to the ceremony. According to Hindu Shastras, a marriage ceremony consists of two parts, the spiritual, which according to the orthodox rites is the essential part, and the secular, the immaterial part. It has been repeatedly pointed out that a marriage according to Hindu law is a sacrament, and that the sacramental or religious ceremonies consist of the *saptapadi* and the 'Vivah Hom' where the parties take the marriage vow which is essential for solemnizing or completing irrevocably the marriage. It is true that where the Shastric ceremonies are superseded by custom, a marriage union takes place without them. But in the absence of proof of custom, when a priest is employed to perform the religious ceremonies, they alone must be regarded as essential and binding to complete the marriage. It is suggested that the parents by gifting the bride have assisted in the performance of the marriage, if they have not performed the marriage, and that therefore they are guilty. That could also be said of the contracting parties and the guests. That view, I think, is not well founded. The performance of marriage means the solemnization thereof by conducting such ceremonies as would complete and validate the marriage. That implies the performance of the sacramental or religious and not the secular ceremony. The mere participation in the latter ceremony would not, in my opinion, offend against the

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provisions of s. 5. That view was accepted in *Ganpatrao* v. *Emperor*[1]; and in *Public Prosecutor* v. *Rattayya*.[2] In the latter case Pandrang Row, J., thought that that view was supported by the proviso to s. 6 of the Act which expressly excludes from punishment any female parent or guardian promoting or negligently failing to prevent a child marriage, and that, in the absence of such a proviso to s. 5, that section could not have been meant to apply to parents. That is one way of ascertaining the intention of the Legislature. The Legislature apparently intended that only the male contracting party to the marriage, who is not a child within a meaning of the Act, could be punished under s. 3 or s. 4 according to his age for contracting a child marriage. If the interpretation sought to be put by the learned Government Pleader on s. 5 were accepted, the bridegroom as well as the bride, irrespective of their ages, would also be liable for punishment under s. 5 for performing or taking part in their own marriage. Having regard to the scheme of the enactment, the offences which are intended to be punished are those committed by the male contracting party, if he is of the age prescribed, under ss. 3 and 4, the persons performing or conducting the marriage under s. 5, and the parents or guardians, who promote such marriage or are negligent in preventing the performance, under s. 6. I do not think that s. 5 is intended to punish parents who arrange or assist in the performance of the marriage ceremony. If the Legislature intended to punish such acts, it would have used clear and definite language such as that contained in s. 6 (*1*) which punishes persons arranging or bringing about such a marriage. There it is stated that "a parent or guardian who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall

[1] (1932) 34 Cri. L. J. 311. [2] [1937] Mad. 854.

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be punishable" etc. That being so, I think with respect that the contrary view which prevailed in the Allahabad High Court (see *Munshi Ram* v. *Emperor*[1]), is not in consonance with the spirit of the enactment.

I would, therefore, confirm the order of the learned Sessions Judge and dismiss this appeal.

BEAUMONT C. J. I agree.

Order confirmed and appeal dismissed.

J. G. R.

[1] [1936] A. I. R. All. 11.

ORIGINAL CIVIL.

Before Mr. Justice Blackwell.

1940
February 7

PRATAPCHAND RAMCHAND AND COMPANY, A FIRM, PLAINTIFFS v. JAHANGIRJI BOMANJI CHINOY, DEFENDANT.*

Indian Partnership Act (IX of 1932), ss. 60, 63—Registered firm—Death of partner not notified to Registrar—Whether firm continued a registered firm—Suit by firm, whether maintainable.

On November 13, 1933, the plaintiff firm was registered under the Indian Partnership Act. The firm in respect of certain of its transactions with the defendant filed the suit on October 26, 1939, and on January 24, 1940, notified the Registrar of firms of the change in the constitution of the firm by reason of the death of one of the partners on May 11, 1937. On issue raised whether the plaintiffs were a firm duly registered under the Indian Partnership Act, 1932:

Held, that notwithstanding the dissolution of a partnership by death of a partner, the firm so far as registration is concerned is to be deemed to be still registered.

That so long as the partners suing were shown in the register as partners, the firm, notwithstanding the death of one of the original partners, remained a registered firm and could sue.

* O. C. J. Suit No. 1544 of 1939.