

The Sessions Judge of Mymensing being of opinion that the Deputy Magistrate had no authority, under s. 62 of the Criminal Procedure Code, to pass the order of the 27th August 1869, sent the proceedings in the above case to the High Court, under s. 434 of the Criminal Procedure Code, to have the conviction, under s. 289 of the Penal Code, quashed. He was also of opinion that the conviction was not warranted by anything within the meaning of s. 289 of the Code. The Sessions Judge, in making the reference, relied on the case of *Queen v. Amiruddin* (1).

The Deputy Magistrate was called upon by the Sessions Judge to support his order, and he cited the case of *Queen v. Abbas Ali Chowdhry* (2).

The judgment of the High Court was as follows:—

We concur with the Sessions Judge in the view he has taken of this case. The order of the Deputy Magistrate must be quashed, and the fine, if paid, refunded.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainstie. ”

1872
Sept. 6.

GAURINATH MOOKERJEE (PLAINTIFF) v. MADHUMANI PESHAKAR
(DEFENDANT).*

Landlord and Tenant—Lodgingslet to a Prostitute.

A landlord cannot recover the rent of lodgings knowingly let to a prostitute who carries on her vocation there.

THE following case was submitted by the Judge of the Small Cause Court of Kishnagar for the opinion of the High Court:

“ In this case the plaintiff sued the defendant, a prostitute, for rent of a room in a certain building in which she lives and plies her vocation.

The Court held that the plaintiff could not recover the rent sued for, as a Court of Justice would give no assistance to the enforcement of a contract opposed to public policy, and no subject can lawfully do that which has a tendency to be injurious to the public or against the public good. There being no Indian precedent bearing on the subject, the plaintiff desired a reference under s. 22, Act XI of 1865, and the judgment of this Court was pronounced contingent on the opinion of the High Court, which is solicited on the following point:—

Whether a landlord can recover rent of lodgings knowingly let to a prostitute, who also carries on her vocation there?

* Reference, No. 11 B, dated the 8th July 1872, from the Judge of the Small Cause Court at Kishnagar.

(1) 6 B. L. R., 78.

(2) 5 B. L. R., F. B., 74.

1872

In making the reference, the Judge cited Broom's Commentaries on the Common Law, 3rd edition, page 270, and *Collins v. Blantern* (1).

GAURINATH
MOOKERJEE
v.
MADHUMANI
PESHAKAR.

The following was the judgment of the High Court :—

We are of opinion that the principles which governed the English cases cited by the Judge are applicable to this country, and that his decision was correct.

1872
Sept. 9.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie

PROTIMA AURAT (PLAINTIFF) v. DUKHIA SIRKAR AND OTHERS (DEFENDANTS).*

Illegal Contract—Money paid under an illegal Contract.

THE following case was submitted by the Judge of the Small Cause Court of Serajunge :—

"The plaintiff alleges that her husband was in *hajāt* in a case of *bad-maashi*, and while there, the defendants took from her Rs. 50, on condition of causing the release of her husband, but they failed to perform the contract: the defendants deny the receipt of any money from the plaintiff or the entering into any contract with her for the purpose of causing the release of her husband. The plaintiff, in her plaint, has not stated anything as to how the money that she paid to the defendants was to be spent, and to whom it was to be paid. From the evidence of two of the plaintiff's witnesses, it appears that the defendants received the money from the plaintiff to pay the same as a bribe to the darogah, under whose custody [her husband] was; this fact elicited from the plaintiff's own evidence renders it quite clear that the contract on which the money was paid was an illegal one; it was in fact a contract which was against public policy, and intended to evade the course of law; such a contract cannot be enforced in a Court of Justice, and money paid under such an illegal and immoral contract cannot be recovered by suit. I am of opinion, therefore, that the plaintiff's case must fall down on her own evidence. . . . But as her pleader has pressed it upon me that the case may be referred to the High Court for opinion, I deem it proper to refer this case under s. 22 of Act XI of 1865. I, therefore, dismiss the plaintiff's claim with costs and interests, subject to the opinion of the High Court as to whether money paid for an illegal purpose, as bribing a darogah, can be recovered by a suit in Court."

The judgment of the High Court was delivered by

COUCH, C. J.—The Judge's view of the law is right.

* Reference, No. 14, dated the 18th July 1872, from the Judge of the Small Cause Court at Serajunge.

(1) 1 Smith's L. C., 325.